



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Fourth day of March Two Thousand and Twenty One

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PRESENT

The Hon'ble Mrs.Justice R.THARANI

CRL MP (MD) No.7706 of 2020
IN
CRL A (MD) No.380 of 2020

ABDUL KHADAR

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL,
KANYAKUMARI DISTRICT.
CRIME No. 13/2017

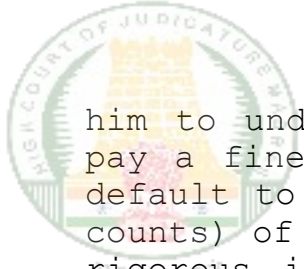
... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence and conviction imposed by the Learned Special Judge for Protection of Children from Sexual offences, Nagercoil in Spl.S.C.No.59/2017 dated 18.11.2020 and enlarge the Petitioner on bail pending disposal of the above said Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.G.KARUPPASAMY PANDIAN, Advocate for the petitioner and of Mr.K.R.BHARATHI KANNAN, Government Advocate on behalf of the Respondent, the Court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Special Judge for Protection of Children from Sexual Offences, Nagercoil in Spl.S.C.No.59 of 2017 dated 18.11.2020, till the disposal of the appeal.

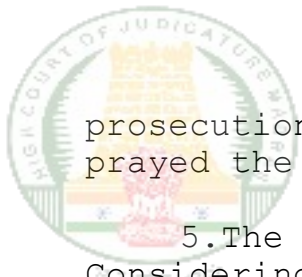
2.The case against the petitioner is that he committed penetrative sexual assault on 10-12 years three female children. A case in Crime No.13 of 2017 was registered under Sections 4, 5(i), 5(1), 5(m) r/w. 6 of POCSO Act and the same was taken on file as Spl.S.C.No.56 of 2017 before the Special Judge for Protection of Children from Sexual Offences, Nagercoil. The Special Judge has found the petitioner guilty under Sections 4 (3 counts), 5(i) (3 counts), 5(1) (3 counts), 5(m) (3 counts) of POCSO Act and sentenced



him to undergo eight years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 4(3 counts) of POCSO Act and sentenced him to undergo ten and half years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 5(i) (3 counts) of POCSO Act and sentenced the petitioner to undergo ten and half years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 5(l) (3 counts) of POCSO Act and sentenced the petitioner to undergo ten and half years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 5(m) (3 counts) of POCSO Act. Against the conviction and sentence imposed by the trial Court, the petitioner has preferred an appeal in CrI.A.(MD)No.380 of 2020. Along with the appeal, he has filed the present application for suspension of sentence pending disposal of the said appeal.

3.On the side of the petitioner, it is stated that the occurrence is said to have taken place on 24.04.2017 but the complaint was lodged only on 24.05.2017. The prosecution failed to explain the delay of one month. P.W.1 has deposed that she has written the complaint whereas P.W.2 and P.W.3 have deposed that P.W.5 written down the complaint. The author of the complaint itself is doubtful. The evidence of P.W.1 reveals that a complaint was filed on the next day of the occurrence. The complaint filed on the next day of occurrence that is on 25.04.2017 was suppressed by the police and the complaint written by P.W.5 was also suppressed by the Police. The prosecution failed to prove the complaint itself. P.W.14 Forensic Department Officer has deposed that there is no sperm available in vaginal swab, which was taken from the victims. The investigating Officer has also admitted that there is no penetrative sexual assault. The petitioner is in custody for the past three months. The petitioner is aged about 60 years having physical ailments and there are much more points for arguments in the appeal and prayed the sentence imposed upon the petitioner to be suspended.

4.On the side of the respondent, it is stated that the prosecution has examined 18 witnesses and marked 20 documents. The victims are aged about 10-12 years. P.W.1 is the mother of one of the victim. The mother of the other victims is died. The evidence of P.W.2 to P.W.4 who are victims in the case proved the cruel sexual assault committed by the petitioner. The evidence of P.W.2 and P.W.3 clearly proves that there was aggregated sexual assault. The evidence of doctor clearly reveals that injuries caused to the private parts of the victims. Ex.P13 to Ex.P15 and the evidence of P.W.15 clearly proves that the injuries in the private parts of the victims. There is no possibility of sperm to be found in the vaginal swab after twenty four hours from the time of occurrence. The



prosecution has proved the case beyond all reasonable doubts and prayed the petition to be dismissed.

5. The offence against the petitioner is serious in nature. Considering the injuries caused to the victims and considering the nature of the offence, this Court is not inclined to grant the relief of suspension of sentence to the petitioner.

6. Accordingly, this petition is dismissed. However, the petitioner is at liberty to file the petition to approach the Court again.

sd/-
04/03/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE SPECIAL JUDGE FOR PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES,
NAGERCOIL.
2. THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL,
KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.7706 of 2020
IN
CRL A (MD) No.380 of 2020
Date : 04/03/2021

MRN
TE/JC/SAR-I : 09/03/2021 : 3P/5C