



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

Friday, the Twelfth day of November Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

Crl.M.P.(MD) No.9581 of 2021
in
Crl.A.(MD) No.427 of 2021

PRABHU

... PETITIONER/1ST APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION (SOUTH),
MADURAI CITY.
CRIME NO. 15 OF 2015.

... 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 imposed on the 1st Appellant herein in SC.No.17/2016 on the file of the Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai dated 15.9.2021 enlarge him on bail pending appeal.

PRAYER IN CRL A(MD) No.427 of 2021:

To call for the records relating to the judgment dated 15.09.2021 passed in SC.No.17 of 2016 on the file of the Principal Special Court for exclusive trial of cases under POCSO Act, Madurai and set aside the same in so far as it relates to the appellants and allow this 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.K.SAMIDURAI, Advocate for the petitioner and of MR.K.SANJAY GANDHI, Government Advocate on behalf of the Respondent, the court made the following order:-

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. This Criminal Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner passed by the Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai, vide judgment, dated 15.09.2021, in S.C.No.17 of 2016.



3.The case against the petitioner is that due to prior motive, on 21.06.2012, the second accused took the defacto complainant to the temple at Pallani, without the knowledge of her mother and forced her to marry the first accused. She was studying in 9th standard and was aged only 15 years. The second and third accused solemnized the marriage of the defacto complainant with the first accused and they took her to Cheppalakottai. Thereafter, the first and second accused took the victim girl to Gundur and made her to stay there. The first accused came in a drunken mood, harassed her physically and mentally. A case against the petitioner and others in Crime No.15 of 2015 was registered and the case was taken on file in Spl.S.C.No.17 of 2016 on the file of the Principal Special Court for Trial of cases under the POCSO Act, Madurai, The Special Court found the petitioner guilty under Section 5(1) r/w Section 6 of POCSO Act, 2012 and under Section 9 of Prohibition of Child Marriage Act. The petitioner was convicted and sentenced to undergo 20 years Rigorous imprisonment and to pay a fine of Rs.55,000/-, in default, to undergo further one year simple imprisonment and under Section 5 (1) r/w Section 6 of POCSO Act, 2012 and the petitioner was convicted and sentenced to undergo 2 years Rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further six months simple imprisonment, under Section 9 of Prohibition of Child Marriage Act.

4. As against the said conviction and sentence, the petitioner has preferred an Appeal in Crl.A.(MD)No.427 of 2021. Along with the Appeal, he has filed the present application for suspension of sentence.

5. On the side of the petitioner, it is stated that the trial Court came to a wrong conclusion that the victim girl was minor at the time of commission of the offence, by relying on Ex.P8 and Ex.C3. The trial Court ought to have believed Ex.D1, which is the birth certificate, produced on the side of the accused. As per Ex.D1, on the date of marriage, the victim girl was more than 18 years. The evidence of C.W.1. is insufficient to prove the School Certificate. Reason for rejection of Ex.D1 is not correct. The petitioner is working in Indian Army. The physical maturity and previous conduct of the victim ought to have taken into consideration. The victim was taken to somany place by using bus and train, somany public and military people were all around her throughout the period, but, she has not raised her voice and the sentence against the second and third accused were already suspended. F.I.R was registered only after three years from the date of occurrence and the petitioner is in custody for the past 60 days and prayed the sentence to be suspended.

6. On the side of the prosecution, it is stated that the offence is serious in nature. If the sentence is suspended, there is a chance for the petitioner to harass the victim again and prayed



7. It is seen that there are some arguable points for consideration in the appeal and the petitioner was working in Indian Army. Considering the period of incarceration undergone by the petitioner so far, this Court is inclined to grant suspension of sentence till the disposal of the Appeal, on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai, and on further condition that:

(i) the sureties shall affix their photographs and Left Thumb Impression along with their signature in the surety bond and the learned Trial Judge may obtain a copy of their any valid identity proof to ensure their identity;

(ii) The petitioner should reside in **Virudhunagar** District and should not enter **Theni District**.

(iii) On release, the petitioner shall appear before the **Virudhunagar Town Police Station** daily at 10.30 a.m for a period of two months and to appear before the concerned Court as and when required by the Court.

sd/-
12/11/2021

/ TRUE COPY /

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE PRINCIPAL SPECIAL JUDGE FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
MADURAI.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION (SOUTH), MADURAI CITY.

<https://hcservices.ecourts.gov.in/hcservices/>



3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE INSPECTOR OF POLICE,
VIRUDHUNAGAR TOWN POLICE STATION,
VIRUDHUNAGAR.

+1. C.C. to MR.K.SAMIDURAI, Advocate SR.No.8029.

ORDER

IN

Crl.M.P.(MD) No.9581 of 2021
in

Crl.A.(MD) No.427 of 2021
Date :12/11/2021

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MK/PN/SAR.IV/15.11.2021/4P/7C