



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

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The Honourable Mr. Justice S.VAIDYANATHAN

and

The Honourable Mr. Justice A.D.JAGADISH CHANDIRA

Crl.M.P.No.3688 of 2022

in Crl.A.No.314 of 2022

Madeena

.. Petitioner/Accused No.2

Vs.

State by

The Inspector of Police,
W-16, All Women Police Station,
Puliyanthope,
Chennai - 12.
(Crime No.6 of 2017)

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) read with Section 439 Cr.P.C., to suspend the sentence imposed on the petitioner by judgment and order dated 07.08.2021 passed in S.C.No.165 of 2018 on the file of the Sessions Court, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and to enlarge the petitioner on bail pending disposal of the appeal.

For petitioner : Mr.K.G.Senthilkumar

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 07.08.2021 passed in S.C.No.165 of 2018 on the file of the Sessions Court, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and to enlarge the petitioner on bail pending disposal of the appeal.



2. The case of the prosecution is that on 16.08.2017, mother of the victim girl gave a complaint that her daughter's father-in-law Abdul Rahman (A1), under the guise of giving siddha medicine, had given her soft drinks laced with sedatives to her daughter, made her unconscious and thereafter, had committed intercourse with her on 17.01.2017; she further alleged that when her daughter had informed the same to her mother-in-law Madeena (A2)/the petitioner herein, she had advised her to adjust with Adbul Rahman (A1) and further, the accused have also threatened that they would upload the private photographs of her taking bath in social media and expose her and thereby prevented her from giving complaint to the police. The allegation against A3, husband of the victim and A4 sister of A3 is that they have abetted A1 and A2.

3. Based on the complaint, a case in Crime No.6 of 2017 was registered by the respondent/police on 16.08.2017. After completion of the investigation, the respondent/police had filed a final report against Adbul Rahman (A1) for the offences punishable under Section 6 of the POCSO Act and Sections 406 and 506 (I) IPC and against the petitioner (A2) and A3 and A4 for the offences punishable under Section 17 r/w 6 of the POCSO Act and under Sections 406 and 506 (I) r/w 107 IPC.

4. The petitioner (A2) was tried along with three other accused in S.C.No.165 of 2018 before the Sessions Court, Special Court for Exclusive Trial for Cases under POCSO Act, Chennai, in which, the learned trial Judge, has, by judgment and order dated 07.08.2021, found the petitioner guilty convicted and sentenced the petitioner (A2) as follows:

Provision under which convicted	Sentence
Section 17 r/w 6 of the POCSO Act	Ten years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

5. Challenging the above conviction and sentence, the petitioner (A2) has filed Crl.A.No.314 of 2022 along with the instant criminal miscellaneous petition seeking suspension of sentence.

6. Heard Mr.K.G.Senthilkumar, learned counsel for the petitioner (A2) and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

7. Learned counsel for the petitioner (A2) submitted that the petitioner is the mother-in-law of the victim girl and the allegation against the petitioner (A2) is that she had abetted the first accused in the offence. He further submitted that the Trial Judge failed to take into consideration that the complaint was an offshoot of a



matrimonial dispute; though the alleged occurrence is said to have been taken place on 17.01.2017, the complaint had been given only on 16.08.2017. It is his further submission that the trial Court having acquitted Manikandan @ Karimullah (A3) and Sameema (A4), erred in finding the petitioner (A2) "guilty" and convicting her. He further submitted that PW1 had admitted that on 16.8.2017, PW2, her mother had given a complaint to the All Women Police Station against her in-laws for setting up a separate family for her and her husband and since A1 and A2 had refused for separate living, PW2 had given the present complaint on the advice of her advocates. Further, PW2, the de facto complainant had not supported the case of the prosecution and she has been treated hostile by the prosecution. PW2 had deposed that she is not aware of the contents of the complaint. Further, it is the admitted case of the prosecution that on the date of the complaint, the victim PW1 was more than 18 years and the charges against the petitioner for the offence under POCSO Act cannot be sustained.

8. On the contrary, the learned Additional Public Prosecutor submitted that the petitioner (A2) is none other than the mother-in-law of the victim girl and due to the threat wielded by Abdul Rahman (A1) and the petitioner (A2), the victim girl (PW1) had not disclosed the same to her mother (PW2); only after the mother of the victim came to know about the acts done by the accused, she had given the complaint. He would further submit that the mother of the victim girl (PW2), who has given the complaint has not supported the case of the prosecution and she has been treated as hostile.

9. In this case, the occurrence is said to have taken place on 17.1.2017, whereas, the complaint is made on 16.8.2017. PW1 has admitted that the complaint had been given by her mother/PW2 on the advice of her advocates after A1 and A2 had refused to set up a separate family for her daughter and son-in-law. PW2, mother of PW1/de facto complainant has not supported the case of the prosecution and she has been treated as hostile. PW2 has also stated that she is not aware of the contents of the complaint. In such circumstances, this court is of the view that the petitioner/A2 has made out a case for grant of suspension of sentence.

10. The petitioner (A2) has raised substantial grounds in the appeal, which require detailed appraisal. Moreover, the petitioner (A2) has been in incarceration since 07.08.2021. Further the appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner (A2) is entitled to the relief of suspension of sentence.

11. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner (A2) on the following conditions:



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- (i) The petitioner (A2) shall be released on bail on her executing a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the Sessions Court, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai;
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their mobile number, Aadhar card or Bank pass Book to ensure their identity; and
- (iii) The petitioner (A2) shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if she is not able to appear before the trial Court on any day, she shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of her absence, as directed by the trial Court.

-sd/-
08/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, CHENNAI

2 THE INSPECTOR OF POLICE,
W-16, ALL WOMEN STATION,
PULIYANTHOPE, CHENNAI-12.

3 THE SUPERINTENDENT OF POLICE
CENTRAL PRISON FOR WOMEN, PUZHAL,
CHENNAI



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.K.G.SENTHILKUMAR Advocate on payment of necessary
charges SR.NO.8619

Order
in
CRL MP.3688/2022
in
CRL A.314/2022

Date :08/06/2022

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JPA 15/06/2022