



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

Friday, the Twenty Fourth day of June Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5529 of 2022
in
CRL.A.(MD) .No.316 of 2022

TAMIL SELVAN

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
CRIME NO.18 OF 2018.

... RESPONDENT/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 Execution of Sentence by granting bail in Spl.SC.No.29 of 2018 on the file of Special Court for Exclusive Trial of cases under protection of Children from the Sexual Offence Act, 2012, Virudhunagar District at Srivilliputtur dated 25.8.2021 pending disposal of the above Criminal Appeal.

PRAYER IN CRL.A. (MD) .No.316 of 2022 :

To admit this appeal on file, to call for the records from the lower court in Special S.C.No.29 of 2018 on the file of Special Court for Exclusive Trial of cases under protection of Children from the Sexual Offence Act, 2012, Virudhunagar District at Srivilliputtur and set aside the judgment dated 25.08.2021 by acquitting the accused and by allowing the 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.V.KATHIRVELU, Senior Counsel for M/S.K.PRABHU, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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



This petition has been filed to suspend the sentence passed in Spl.S.C.No.29 of 2018, dated 25.08.2021, on the file of the learned Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offence Act, 2012, Virudhunagar District at Srivilliputtur, till the disposal of this Criminal Appeal.

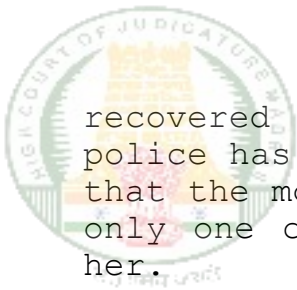
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2.The case of the prosecution is that the victim child was studying 12th standard in a Government Higher Secondary School at Sivaganapuram, Vilathikulam Taluk, Tuticorin District, that the accused was working as a Physical Education Teacher in the said school, that since the selection of Kabadi players was scheduled on 04.08.2018 in Marimuthu Nadar Higher Secondary School, Dhalavaipuram, the accused had taken the victim girl to participate in the selection, that on 03.08.2018, they arrived Rajapalayam around 21.00 hours and the accused had taken a room in a lodge and stayed there with the victim, that the accused directed the victim to sleep in the cot, that since the accused forced the victim to sleep in the cot, she get up and slept on the corner of the cot, that thereafter, the accused caught hold of the hands of the victim and tried to misbehave with her, that the victim girl pushed the accused, took her mobile phone into the bathroom and locked the door, that thereafter, called her relatives, who in turn informed the same to the police, that at about 01.00 a.m. midnight, the respondent police came to the lodge and rescued the girl and arrested the petitioner/accused and that on the basis of the complaint lodged by the victim girl, FIR came to be registered in Crime No.18 of 2018 for the offence under Sections 10 r/w 9(f) of POCSO Act, 2012 and Sections 3(1) (w)(i) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015. After completing investigation, the respondent police had laid the final report against the petitioner/accused.

3.During trial, the prosecution had examined 16 witnesses as P.W.1 to P.W.16 and exhibited 21 documents as Ex.P.1 to Ex.P.21 and one Material Object as M.O.1. The accused has adduced neither oral nor documentary evidence. The learned Sessions Judge upon considering the evidence adduced and on hearing the arguments of both sides, passed the impugned judgment, convicting the petitioner/accused for the offences under Sections 10 r/w 9(f) of POCSO Act, 2012 and Section 363 IPC and sentenced him to undergo 7 years imprisonment each for the offences and to pay a fine of Rs.5,000/- each in default to undergo six months simple imprisonment each and further ordered that the said sentence shall run consecutively. Aggrieved by the said Judgment of conviction and sentence, the petitioner/accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

4.The learned Senior Counsel for the petitioner would submit that according to the prosecution, the victim girl had contacted her relative Mariammal through cellphone, but the cell phone of the

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recovered and produced before the trial Court, that the respondent police has not collected the CCTV footage available in the lodge and that the mother of the victim girl had admitted that they are having only one cell phone in their house and the same is available with her.

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5.The learned Additional Public Prosecutor would submit that the learned Sessions Judge had dealt with those aspects and rightly found the petitioner guilty for the said offences.

6.The learned Senior Counsel for the petitioner would submit that the petitioner has been in incarceration from the date of judgment that is on 25.08.2021 onwards. He would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

7.The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

8.This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

9.The learned Senior Counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal revision and further the criminal revision is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10.Considering the above facts and circumstances of the case and also considering the period of incarceration, this Court is inclined to grant suspension of sentence to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Fast Track Mahila Court, Srivilliputur.

(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 Aadhar card or Bank Pass Book to ensure their identity; and



(iii) The petitioner shall appear before the concerned Court on all working days at 10.30 a.m., for a period of one month and thereafter, appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

sd/-
24/06/2022

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27/06/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE SPECIAL JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER PROTECTION
OF CHILDREN FROM THE SEXUAL OFFENCE ACT 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
2. THE JUDGE,
FAST TRACK MAHILA COURT,
SRIVILLIPUTHUR.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
RAJAPALAYAM, VIRUDHUNAGAR DISTRICT.
4. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.PRABHU, Advocate (SR-6136[I] dated 24/06/2022)

ORDER IN
CRL MP(MD) No.5529 of 2022
in
CRL.A.(MD).No.316 of 2022
Date :24/06/2022

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USK/PN/SAR-I/27.06.2022/4P/7C