



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

Friday, the Second day of December Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.5523 of 2022

IN

CRL A(MD) No.314 of 2022

UDHAYAVALLI

... APPELLANT/ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
KEELASEVALPATTI POLICE STATION,
SIVAGANGAI DISTRICT.
(CR.NO.131/2020)

... 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 of imprisonment imposed by the Learned Sessions Judge, Special Court for Exclusive Trial of cases under the POCSO Act 2012, Sivagangai in SPL.SC.No.22/2020 dt 13.04.22, and enlarge the petitioner/appellant on bail pending disposal of the above said criminal appeal.

PRAYER IN CRL.A(MD).314 of 2012:

Pleased to call for the records and set aside the conviction and sentence passed against them by the Learned Sessions Judge, Special Court for Exclusive Trial of cases under the POCSO Act 2012, Sivagangai District, dated 13.04.2022 made in Spl.S.C.No.22/20 by allowing the present 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 M/S.DURAI PANDIAN.K.S., Advocate for the petitioner and of Mr.SS.MADHAVAN, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special SC No.22 of 2020, dated 13/04/2022 by the Sessions Judge, Special Court for Exclusive Trial of the cases under POCSO Act, 2012 and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The facts in brief:-

The victim is a boy and the accused is a woman. Whenever the accused is to go to her sister home, who is nearer to the victim house, used to sexually assault the victim boy and misbehaved indecently by touching his private part. On the basis of the above said occurrence, the case was registered on the basis of the complaint given by the de-facto complainant, who is the father of



the victim boy. After completing the formalities investigation, final report has been filed before the concerned trial court for the offences punishable under sections.

3. Before the trial court, on the side of the prosecution, 9 witnesses were examined and 7 documents marked. On the side of the accused, 2 witnesses were examined and 3 documents marked

4. At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced him to undergo 3 years Rigorous Imprisonment for the offence under section 383 r/w 384 IPC and 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment for the offence under section 7 r/w 8 of POCSO Act, 2012.

5. Challenging the above said conviction and sentence, this appeal has been preferred. Pending appeal, this miscellaneous petition has been filed.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would submit that originally, there was no allegation with regard to the above said sexual assault by the accused. But in the alternation report improvement has been made and there is a delay of 30 days in registering the FIR; the accused was arrested and remanded to custody, on 01/08/2020; On 17/08/2020, further statement was recorded as if the above said sexual assault has been committed; On 19/07/2020, when the occurrence said to have taken place, the victim has not stated anything to PW1 to PW3; Absolutely, there was money transaction between the de-facto complainant and the petitioner and out of the above said money transaction issue only, the above said false complaint has been given after a lapse of 30 days.

8. Per contra, the learned Government Advocate (Criminal side) would submit that it is a clear case of abuse of the victim boy by the accused. According to him, the victim boy alleged to have been threatened by the accused stating that only because of throwing the ball on the window glass of her house, it was broken and she also threatened the victim boy to part with money otherwise she will inform to his parents as well as police and continuously extracting money from him; The victim boy for the purpose of satisfying the accused, used to steal money from the house and used to give the same to the accused. By the above said way, more than Rs.2,00,000/- was extracted by the accused. Only on coming to know all these events, the above said case was registered. According to him, absolutely, no ground is made out for suspending the sentence.

9. The entire records have been called for and perused.

10. No doubt that the victim boy has stated in his evidence to the effect that he was sexually abused by the petitioner herein by



making threat. He was paying money regularly to satisfy the 1. So absolutely, I find the ground that has been made by the petitioner cannot be taken into account at this stage, it is a matter for consideration in the main appeal.

11. Considering the age of the victim boy and also considering the fact that the petitioner is a matured woman and indecently behaved with the victim boy, I am of the considered view that this is not a fittest case to exercise the power to sustain the sentence. If she is released on bail, there is every possibility of causing trouble to the victim boy.

12. At this juncture, the learned counsel appearing for the petitioner would submit that the victim boy and the accused are not neighbours and they belong to separate village, absolutely, there is no possibility to give trouble to the victim boy. But this argument also cannot be considered at this stage, since even it is the case of the prosecution that the accused whenever came to the house of her sister, misbehaved with the victim boy. More-over, as mentioned above, more than Rs.2,00,000/- was extracted from the innocent victim boy. So I find that no ground is made out by the petitioner to suspend the sentence.

13. In the result, this criminal miscellaneous petition is **dismissed**.

sd/-

022022

/ TRUE COPY /

/12/2022

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

TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF THE
CASES UNDER POCSO ACT, 2012, SIVAGANGAI.
- 2 THE OFFICER INCHARGE, SPECIAL PRISON FOR WOMEN, MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE INSPECTOR OF POLICE
KEELASEVALPATTI POLICE STATION, SIVAGANGAI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.5523 of 2022
IN CRL A(MD) No.314 of 2022
Date :02/12/2022

er

SA/VR/SAR.4/21.12.2022/3P/6C