



WEB COPY

Crl.M.P(MD)



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON	08.07.2022
PRONOUNCED ON	14.07.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.5815 of 2022

in

Crl.A.(MD)No.291 of 2022

SURESHKUMAR

NOW CONFINED AT CENTRAL PRISON,
MADURAI.

... APPELLAT/PETITIONER

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.

... RESPONDENT/RESPONDENT

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 against the petitioner in Spl.S.C.No.51 of 2019 dated 25.03.2022 passed by the Learned Special Court for Exclusive Trial of cases under POCSO Act cases Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A(MD)No. 291 OF 2022:

Pleased to call for the records in SPL.S.C.No.51 of 2019 dated 25.03.2022 passed by the Learned Special Court for Exclusive Trial of Cases under POCSO Act cases, Virudhunagar District at Srivilliputhur and to set aside the same.

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.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.51 of 2019, dated 25.03.2022, on the file of the learned Sessions Judge, Srivilliputtur, till the disposal of this Criminal Appeal.

<https://www.mjc.m.gov.in/judis>



2. The case of the prosecution is that the victim girl was aged 15 years and studying in 10th standard, that on 05.07.2019 at about 03.00 p.m., the petitioner/appellant went to the victim girl's school and informed the victim girl that he would arrange scholarship from MLA fund, for which, photograph has to be fixed in the application, that when the victim girl as well as the headmistress denied for the same, the petitioner approached the second accused, who is working as staff in the said school and she has sent the victim girl along with the first accused at about 03.30 p.m., under compulsion, that the first accused thereafter had taken the victim girl in his two wheeler to Nenmeni Kanmaikarai, Putthur with an intention to commit sexual assault and thereby he touched upon her hip, neck and chest, that he had removed her school uniform dresses and he had taken photographs of the victim girl in a nude manner with his cell phone, that when the victim girl objected the same and raised alarm and tried to run away from the place, he scolded her in filthy language, that thereafter he threatened the victim girl that he will murder her if she disclose the same to anyone, that the petitioner gave her Rs.200/- to purchase footwear and to take passport size photo on the next day, but she refused to receive the money, that thereafter, the petitioner had forcibly taken her to school and dropped her and that on the basis of the information furnished by the victim girl, her mother lodged the complaint.

3. On the basis of the complaint lodged by the mother of the victim girl, FIR came to be registered in Crime No.15 of 2019 against the petitioner and one Kala for the offences under Sections 294(b) and 506(1) IPC and Sections 7, 8, 16 and 17 of POCSO Act.

4. During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 16 documents as Ex.P.1 to Ex.P.16 and marked 2 material objects as M.O.1 and M.O.2, whereas, the accused have adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidence and on hearing the arguments advanced by both the sides, has passed the impugned judgment dated 25.03.2022 convicting the first accused for the offence under Section 363 IPC and sentenced to undergo 7 years imprisonment and to pay a fine of Rs.1,000/- and also convicting the first accused for the offence under Sections 8 r/w 7 of POCSO Act and sentenced to undergo 5 years imprisonment and to pay a fine of Rs.1,000/-. Aggrieved by the said judgment of conviction and sentence, the first accused has preferred the present appeal along with the above application for suspension of sentence.

6. The learned counsel for the petitioner would submit that the victim girl has given evidence as P.W.2 and the significant question is as to whether the prosecution has proved the foundational facts and whether the evidence of the victim girl inspires



confidence of the Court, that the trial Court has failed to appreciate the evidence of the victim girl in a proper perspective and that the trial Court has also failed to consider that the evidence of the victim girl is riddled with unnaturalness and seemed to be artificial.

7. The learned Additional Public Prosecutor would submit that the trial Court has clearly observed that the victim girl had deposed before the trial Court as well as in the statement recorded under Section 164 of Cr.P.C. about the sexual assault committed on her by the petitioner.

8. Considering the above facts and circumstances and also the nature of charges levelled against the petitioner and the seriousness and gravity of the offence alleged against the petitioner and also the fact that the petitioner is in incarceration from the date of judgment i.e., on 25.03.2022, this Court is not inclined to suspend the sentence to the petitioner at this point of time.

9. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
14/07/2022

/ TRUE COPY /

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

csm

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 SPECIAL JUDGE
FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT
SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
RAJAPALAYAM, VIRUDHUNAGAR DISTRICT.



Crl.M.P(MD)



22

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

WEB COPY

ORDER
IN
Crl.M.P(MD)No.5815 of 2022
in
Crl.A.(MD)No.291 of 2022
Date :14/07/2022

PKP/JM/SAR-3/19.07.2022/4P/5C