



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

Thursday, the Twentieth day of October Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P.(MD)No.5952 of 2022
in
CRL.A.(MD)No.339 of 2022

PANDIARAJAN

... PETITIONER/APELLANT/
SINGLE ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT
(CRIME NO. 21 OF 2016)

... 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 he sentence imposed in Spl.S.C.No. 1 of 2017 dated. 07.03.2022 passed by he Special Court for Exclsuive Trial of Cases under POCSO Act. 2012, Srivilliputhur, Virudhunagar District and enlarge the petitioner on bail petition disposal.

PRAYER IN CRL.A.(MD)No.339 of 2022:

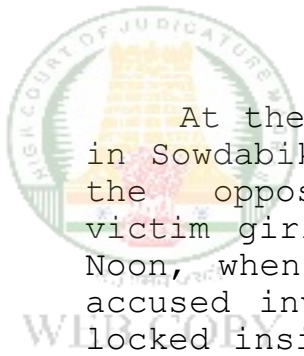
Pleased call for the records and set aside the conviction and sentence passed in Spl.S.C.No.1 of 2017 dated 11.03.2022 by the Special Court for Exclusive Trial of Cases under Protection of Children From the Sexual Offences Act, 2012 Virudhunagar District at Srivilliputhur and allow this appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.RAMAKRISHNAN. K.K., Advocate for the petitioner and of M/S.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 by the Special Court for Exclusive Trial of Cases under Protection of Children From the Sexual Offences Act, 2012 Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail, pending disposal of the Appeal.

2.Case of the prosecution in brief:-

<https://www.mhc.tn.gov.in/judis>



At the time of occurrence, the victim was studying 10th in Sowdabika High School at Allampatti. The accused was residing in the opposite house of the complainant and he has followed the victim girl, whenever she went out. On 05.09.2016, at about 12.00 Noon, when the victim girl was playing in front of the house, the accused invited the child to his house. Thereafter, the house was locked inside and the child was made to drink the liquid, which was mixed with sleeping pills, on taking she became drowsy. After taking the drink, by removing her dress, the accused person committed penetrative sexual assault upon the victim girl for many times between 1.00 p.m to 3.00 pm.. On the basis of the above said occurrence, the case was registered. After completion of investigation, final report was filed before the concerned Court.

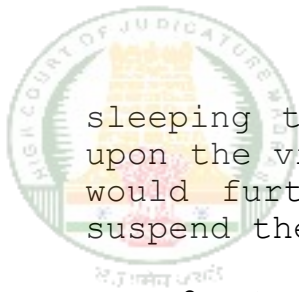
3.Before the trial Court, on the side of the prosecution, 17 witnesses have been examined and 16 documents marked. 9 material object was exhibited. On the side of the accused, no witness was examined and no document was marked. No materials object was exhibited.

4.At the conclusion of the trial, the Trial Court found the petitioner guilty and convicted the accused for the offence under Section 366 IPC and sentenced him to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months of Simple Imprisonment, under Section 12 of POCSO Act, 2012 and sentenced him to undergo 3 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months of Simple Imprisonment and under Section 6 of POCSO Act, 2012 and sentenced him to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months of Simple Imprisonment. Challenging the conviction and sentence, the main appeal has been preferred. Pending the main appeal, this petition came to be filed to suspend the sentence.

5.Heard both sides.

6.The learned counsel for the petitioner submitted that there was love affair between the victim and the accused person, also submitted that there was no injury found on the private part of the victim. Even as per the medical evidence, the offence under Section 6 of POCSO Act, 2012 is not made out and section 12 of POCSO will be attracted. He would further submit that when the love affair was brought to the notice of the parents, they were made objection. Because of the objection only, the above said complaint has been given as if, the victim girl was sexually assaulted by the petitioner. Hence, he prays for bail.

7. Per contra, the learned Government Advocate(Crl.side) submitted that the victim is aged about 15 years, at the time of occurrence and she had consumed drinks, which was mixed with



sleeping tablets and forcible he had committed sexual intercourse upon the victim girl for many times between 1.00 p.m to 3.00 pm.. He would further submit that there is no ground for considering to suspend the sentence.

8. On perusal of records and judgement of the trial Court, it shows that the evidence of the victim girl was cogent and does not suffer from any infirmity. The reading of the evidence of P.W.1, shows that there was some sort of trouble between them, over which, the father of the victim has given a complaint against the petitioner. The fact remains that on the particular date of occurrence, the victim girl was secured from the petitioner's house. The evidence of P.W.2, shows that after hearing the noise of the victim from the accused house, she went to the accused house and found that the bangles of the victim girl was broken and the victim was lying in the mat. P.W.16, who is the doctor, examined the victim and he stated that the victim was subjected to sexual intercourse and no injury was found in her private part.

9. The contention of the learned counsel for the petitioner that there was a love affair between the victim girl and the petitioner, there was no sexual assault, cannot be taken into consideration at this stage and this is matter for consideration in the appeal.

10. Considering the gravity of the offence and the manner in which, the offence committed by the petitioner, I find that such nature of person is not at all entitled for suspending the sentence and if he is released on bail, there is a possibility of making trouble to the victim girl in future and also this is not a fit case to exercise the jurisdiction of suspension of sentence.

Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-

20/10/2022

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/10/2022

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

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TO

1. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.



2.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT

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

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-11852[I] dated
26/10/2022)

ORDER
IN
CRL.M.P. (MD) No.5952 of 2022
in
CRL.A. (MD) No.339 of 2022
Date :20/10/2022

RK/GB/SAR-2 (31/10/2022) 4P/5C