



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

Monday, the Nineteenth day of September Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL.M.P.(MD)No.6079 of 2022
in
CRL.A.(MD)No.349 of 2022

GANESAN

... PETITIONER / APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.1/2017)

... 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 of Imprisonment imposed by the Learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act,2012, Virudhunagar District at Srivilliputhur made in Special Sessions Case No.18 of 2017 by the Judgment dated 21/4/2022 and enlarge the petitioner / Appellant on bail, pending disposal of the above said Criminal Appeal.

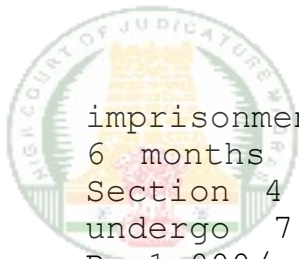
Prayer in CRL.A.(MD)No.349 of 2022:

To call for the records and set aside the and Judgment and conviction dated 21.04.2022 by the Learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur made in Special Sessions Case No.18 of 2017 and acquit the Appellant.

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.SARAVANAKUMAR P, Advocate for the petitioner and of MR.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur, dated 21.04.2022, in Spl.S.C.No.18 of 2017 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner, has been convicted by the learned trial judge, for the offence under 450 IPC and sentenced to undergo 7 years



imprisonment and imposed a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment and for the alleged offence under Section 4 of POCSO Act, 2012 he was convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 6 months, in S.C.No.60 of 2017 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur. Both the sentence were ordered to be run concurrently. Since the accused was released on bail as per the anticipatory bail order in Crl.O.P.(MD). No.1021 of 2017 of this Court, dated 02.02.2017 and he was not inside the prison during the pre-trial stage, no period shall be set off under Section 428 Cr.P.C. But, the petitioner was acquitted from the charges under Section 6 r/w 5(i) of the POCSO Act.

3.The case of the prosecution in brief:

On 23.01.2017, the mother of the victim girl lodged a complaint stating that at about 01.00 a.m., in the midnight, she found the accused entering into the house and came to the upstairs bath room, hugged the victim by closing her mouth and touched her private parts. He also attempted to commit penetrative sexual assault. On hearing the noise, the defacto complainant knocked the door. At that time, the accused person suddenly, came out of the room. The entire event was narrated by the victim girl. On the basis of the information given by the defacto complainant and the victim girl, the case was registered in Crime No.1 of 2017 for the offences punishable under Sections 450 of IPC and Section 4 of POCSO Act and Section 6 r/w 5(i) of POCSO Act. The case was tried by the Special Court in Spl.S.C.No.18 of 2017. To prove the case on the side of the prosecution 18 witnesses have been examined and 14 documents were marked.

4.On the basis of the evidence let in by the prosecution, the trial Court found the accused guilty under Section 450 of IPC and Section 4 of POCSO Act, convicted and sentenced him to undergo 7 years imprisonment for each offence and thereafter, he was taken into custody. Thereafter, the petitioner herein was taken into custody and filed the present appeal. Pending appeal seeking suspension of sentence this Criminal Miscellaneous Petition has been filed.

5.The learned counsel for the petitioner submitted that the victim girl is a close relative of this petitioner and even as per the statement of the victim and as well as the evidence of P.W.10, absolutely, there was no external injuries found on the private parts of the victim girl and by erroneous consideration of the facts, the trial Court has convicted this petitioner.

6.Per contra, the learned Additional Public Prosecutor would submit that the victim girl is in a prohibited relationship to the petitioner, because both are cousins and he has also attempted to



commit penetrative sexual assault upon the 16 years old victim and that was immediately noticed by the defacto complainant. According to the learned Additional Public Prosecutor only on appreciation of facts, proper judgment has been rendered and hence, no interference is called for to suspend the sentence.

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7. Heard both sides. Perused the records.

8. As it is seen from the records, the victim girl is only aged about 16 years and he has clearly narrated the events. Due to some matrimonial disputes, the petitioner severed from his wife. Now she is residing away from this petitioner. There was a suggestion made to the effect that the victim girl was arranged for marriage with this petitioner, but that was denied by the victim girl. So this suggestion itself shows that the petitioner has not approached the Court with true facts. The way, in which, the above said sexual assault committed by the petitioner, dis-entitles the petitioner from claiming the suspension of sentence. If he is released on bail by suspending the sentence, there is every likelihood of making trouble to the victim girl.

9. Even though there is mere contradictions with regard to the manner of events, that things can be taken into account only at the time of hearing the appeal. Mere segregation of portion of evidence should not be undertaken by this Court at this stage for suspending the sentence. So this is not a fit case to exercise the suspension power. Therefore, this Criminal Miscellaneous Petition is dismissed.

sd/-

19/09/2022

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/09/2022

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 CASES
UNDER POCSO ACT, 2012, VIRUDHUNAGAR DISTRICT
SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR, VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL.M.P. (MD) No. 6079 of 2022
in

CRL.A. (MD) No. 349 of 2022

Date : 19/09/2022