



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

Friday, the Twenty Third day of September Two Thousand and
Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.8294 of 2022
in
Crl.A.(MD).No.446 of 2022

DEENAN @ VIJAYA NARAYANAN

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
AMMAPETTAI POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.261 OF 2014.

... RESPONDENT/RESPONDENT/
COMPLAINANT

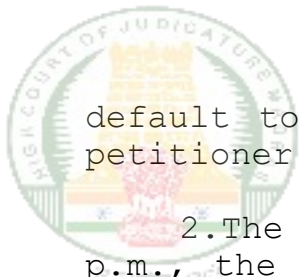
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed by the Judgment dated. 31.01.2020 passed in Spl.S.C.No. 28 of 2014 on the file of the learned Sessions Judge for Sexual Offences against Children Special Court, Thanjavur and enlarge the petitioner on bail pending.

PRAYER in Crl.A.(MD).No.446 of 2022 :

Pleased to call for records and set aside the conviction passed by the Learned Sessions Judge for Sexual Offences against Children Special Court, Thanjavur in Special S.C.No.28/2014 dated 31.01.2020 and acquit the Appellant of the charges.

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.SOMASUNDRAM.E, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

The petitioner was convicted by the Judgment dated 31.01.2020 by the learned Sessions Judge for Sexual Offences against Children Special Court, Thanjavur, in Spl.C.No.28 of 2014 stating that the petitioner was found guilty for the offence punishable under Section 5(m) r/w Section 6 of POCSO Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and imposed fine of Rs.5,000/-, in



default to undergo three months simple imprisonment. He seeks suspension of sentence.

2.The case of the prosecution in brief is that at about 4.30 p.m., the victim girl has gone to open place for answering natural call. At that time, the accused person came in motor cycle and asked her to come near thorny bush and in that place, the accused person committed sexual assault upon the victim girl. Based on the aforesaid occurrence, the case was registered and tried in Spl.S.C.No.28 of 2014 by the Special Court, Tanjore.

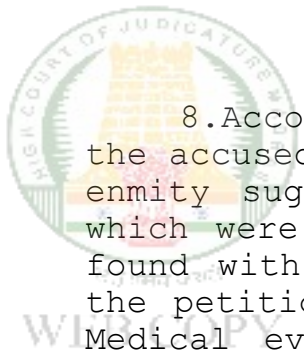
3.During the course of trial, on the side of the prosecution 21 witnesses were examined 22 documents were marked apart from four material objects. On the side of the accused, two witnesses were examined. At the conclusion of trial, the trial Court found that the accused has committed the offence punishable under Section 4 of the POCSO Act and consequently convicted and sentenced him to undergo 10 years rigorous imprisonment and imposed a fine of Rs.5,000/-. Challenging the conviction and sentence, the main appeal has been preferred. Pending main appeal, this petition has been filed seeking suspension of sentence.

4.The learned counsel for the petitioner would submit that the age of the petitioner was not properly proved during the trial and medical evidence is not corroborated by oral evidence. Even as per the evidence of the Doctor, no external injury was found on the private parts of the victim girl and the complaint has been given only after a lapse of two days. According to the learned counsel for the petitioner, on erroneous appreciation of facts, the trial Court has recorded the finding of guilt.

5.Per contra, the learned Additional Public Prosecutor would submit that the age of the victim girl has been properly established by producing Ext.B-15. On proper appreciation of facts only the aforesaid judgment has been rendered and no interference is called for suspending the sentence.

6.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the records.

7.P.W.1 is the mother of the victim girl and P.W.2 is the victim girl and she was aged about 11 years at the time of her examination before the trial Court. Reading of the evidence of the victim girl shows that she was matured enough to understand the natural event. This has given a clear picture about how she was sexually assaulted by this petitioner. Immediately after the aforesaid occurrence, she informed the same to P.W.1, and then she was taken to the hospital and on the next day, the statement was recorded.



8. According to the defence, there was previous enmity between the accused family and the defacto complainant's family. The remote enmity suggested to P.W.1 was denied by her. Material objects, which were collected during the course of investigation, were also found with sperms of respondent. Further, the learned counsel for the petitioner submitted that group of the blood was inconclusive. Medical evidence is not supporting the case of the prosecution. P.W.15, Doctor has stated that in the swap test no sperm was detected. However, as I mentioned earlier dress materials were found with sperms.

9. Considering the age of the victim girl, the argument that the age was not properly established before the trial Court cannot be accepted at this stage, this is the matter for consideration at the time of main appeal. Considering the manner in which aforesaid crime was committed and considering the age of the victim girl, I am of the considered view that this is not a fit case to suspend the sentence.

10. Accordingly, this petition seeking suspension of sentence is dismissed.

sd/-

23/09/2022

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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,
SEXUAL OFFENCES AGAINST CHILDREN SPECIAL COURT,
THANJAVUR.
2. THE INSPECTOR OF POLICE
AMMAPETTAI POLICE STATION,
THANJAVUR DISTRICT.
3. THE SUPERINTENDENT OF PRISON,
BORSTAL SCHOOL, PUDUKKOTTAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL MP(MD) No.8294 of 2022
in
Crl.A. (MD) No.446 of 2022
Date :23/09/2022

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<https://www.csbj.in/csr-I/27.09.2022/3P/5C>