



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

Tuesday, the Twenty Eighth day of June Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6749 of 2022
IN
CRL A(MD)No.379 of 2021

MURUGAN

... APPELLANT/ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
AWPS THALLAKULAM POLICE STATION,
MADURAI DISTRICT.
CR.NO.22/2015

... 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 Learned Principal Sessions Court for POCSO Cases, Madurai in SPL.S.C.No.31/2015 dated 24.08.2021 and enlarge the Appellant on bail pending disposal of the above said Criminal Appeal.

PRAYER IN CRL A(MD)No.379 of 2021:

Pleased to call for the records and set aside the sentence and conviction imposed by the Learned Principal Special Court for Pocso Cases, Madurai in SPL.S.C.No.31 of 2015 dated 24.08.2021.

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.JINNAH.S.M.A, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 24.06.2022

Delivered on : 28.06.2022

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Principal Sessions Court for POCSO Cases, Madurai in SPL.S.C.No.31 of 2015, dated 24.08.2021 and enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that on 01.06.2015, the victim girl, who was aged about 8 years at that time, had gone to fetch water at about 01.30 pm; that the accused had lured the girl to his house and there, he had removed all his dress as well as the victim



girl's dress, then he had kissed her and laid upon her in a nude manner, that the victim girl being unable to bare the weight of the petitioner started shouting and hence, the petitioner got up and dressed himself and that the victim girl came out of the house, informed the occurrence to her mother's sister.

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3. On the basis of the complaint lodged by the victim girl's mother, FIR came to be registered in Crime No.22 of 2015, for the offence under Section 5(m), 6 and 18 of POCSO Act and after completing the investigation, the respondent Police has laid the final report and the case was taken on file.

4. During trial, 18 witnesses have been examined as P.W.1 to P.W.10 and 11 documents were exhibited as Ex.P.1 to Ex.P.11. The defence had examined three witnesses as D.W.1 to D.W.3 and exhibited 5 documents as Ex.D.1 to Ex.D.5. The Court has examined one witness as C.W.1 and exhibited two documents as Ex.C.1 and Ex.C.2.

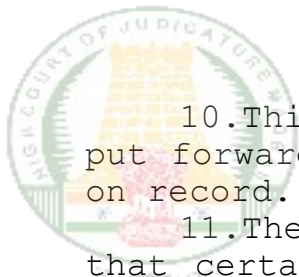
5. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment, dated 24.08.2021, convicting the accused for the offence under Section 9(m) of POCSO Act and sentenced him to undergo 7 years Rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year Rigorous imprisonment and also awarded compensation. Aggrieved by the said judgment of conviction and sentence, the accused has preferred the above appeal.

6. It is evident from the records that the petitioner's earlier two applications for suspension of sentence were dismissed by this Court vide orders, dated 30.11.2021 and 22.03.2022. The petitioner/appellant has now come forward with the third application for suspension of sentence.

7. As rightly contended by the learned counsel for the petitioner/appellant, originally charges were framed against the accused under Section 5(m), 6 r/w 18, 7 / 8 of POCSO Act and that the learned Sessions Judge by holding that the charge of aggravated penetrative sexual assault was not proved, convicted the accused for the offence of aggravated sexual assault under Section 9(m) of POCSO Act and sentenced the accused to undergo 7 years Rigorous Imprisonment and with fine.

8. The learned counsel appearing for the petitioner submitted that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

9. The learned counsel appearing for the respondent submitted that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of



10.This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

11.The learned counsel appearing for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal revision and further the criminal revision is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

12.Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) the petitioner is directed to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the Principal Sessions Court for POCSO Cases, Madurai ;

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(iii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iv) The petitioner shall appear before the trial Court on all working days at 10.30 am for a period of one month and thereafter, he shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-

28/06/2022

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29/06/2022

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

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 JUDGE,
PRINCIPAL SESSIONS COURT FOR POCSO CASES,
MADURAI.

2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
AWPS THALLAKULAM POLICE STATION,
MADURAI DISTRICT.

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

ORDER

IN

CRL MP (MD) No.6749 of 2022

IN

CRL A (MD) No.379 of 2021

Date :28/06/2022

SA/VR/SAR.3/29.06.2022/4P/5C