



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

Tuesday, the Sixth day of September Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL.M.P.(MD)No.6940 of 2022
in
CRL.A.(MD)No.6 of 2022

1 K.MOHANA PRAKASH
2 JEYAPRAKASH

... PETITIONERS / APPELLANTS /
ACCUSED 1 & 2

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SEKKANOORANI POLICE STATION,
USILAMPATTI,
MADURAI.
CRIME NO.425/2014

... RESPONDENT / 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 and conviction imposed by the court of Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act Madurai dated 29.11.2021 made in Special SC.No.14/2015 pending disposal of the Criminal Appeal.

Prayer in CRL.A.(MD)No.6 of 2022:

To call for the records and set aside the judgment dated 29.11.2021 made in Special S.C.No.14/2015 on the file of the court of Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Madurai and allow the above Criminal 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.S.RAMSUNDARVIJAYRAJ, Advocate for the petitioner and of Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 18.08.2022

Delivered on : 06.09.2022

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai in



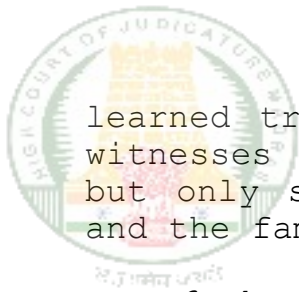
Special.S.C.No.14 of 2015, dated 29.11.2021 and enl. the petitioners on bail pending disposal of the appeal.

2.The case of the prosecution is that the victim's father was working as a watchman in C.K.Kalyana Mahal; that the victim who was studying 10th Standard at that time, used to go to the said Kalyana Mahal for studying; that on 09.10.2014 at about 09.00 pm, the victim girl as usual, was studying in the frontage of the Kalyana Mahal; that both the accused had stealthily come there and after closing her mouth with cloth forcibly took her to the underground of the Kalyana Mahal; that while the second accused was holding the legs of the victim girl, the first accused had committed penetrative sexual assault on the victim girl, that since tying of her hands got loosened, she escaped from that place and went to her home and informed about the incident to her mother and on the basis of the complaint lodged by the mother of the victim girl, FIR came to be registered in Crime No.425 of 2014 for the alleged offences under Sections 366(A), 376, 342, 34 IPC r/w 3, 4, 5(g) of POCSO Act. The respondent, after completing the investigation has laid the final report on 20.03.2015 and the case was taken on file in Spl.S.C.No.14 of 2015.

3.During trial, the prosecution has examined 21 witnesses as P.W.1 to P.W.21 and exhibited 26 documents as Ex.P.1 to Ex.P.26 and four material objects as M.O.1 to M.O.4. The accused have examined one witness as D.W.1 and adduced no documentary evidence.

4.The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment, dated 29.11.2021, convicting the accused for the offence under Section 342 r/w Section 34 of IPC and sentenced them to undergo one year imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for three months; Section 366 r/w Section 34 IPC and sentenced them to undergo 10 years imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo one year simple imprisonment and Section 5(g) and 6 of POCSO Act, sentenced them to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo 1 years simple imprisonment and to pay a sum of Rs.50,000/- as compensation to the victim.

5. The learned counsel for the petitioners/appellants would submit that the occurrence said to be happened at 09.00 pm and on the basis of the information given by the victim girl, her mother gave a complaint before the respondent Police on the same day at about 12.00 am on 09.10.2019 and that the very demand made by P.W.1 from the accused to give jewels and house for withdrawing the complaint would prove the falsity of the case ; that all the witnesses have given evidence contrary to each other and not in tune with the case of the prosecution and the same would only go to show that the case was foisted against the petitioners and that the



learned trial Judge ought to have considered that the prosecution witnesses have not deposed about their witnessing the occurrence, but only stated about the previous enmity between the petitioners and the family of P.W.1.

6.The learned counsel for the petitioner would further submit that in the complaint lodged by P.W.1, it has been stated that the first accused alone had committed aggravated penetrative sexual assault and at that time, the second accused was standing outside. But subsequently, the prosecution has developed a story as if the second accused was also available at the place of occurrence and he was holding the legs of the victim, while the first accused had committed sexual assault. He would further submit that the victim girl has not even mentioned the name of the second accused, while narrating the incident before her mother, after the alleged occurrence and that subsequently, the second accused has been falsely implicated in the above case.

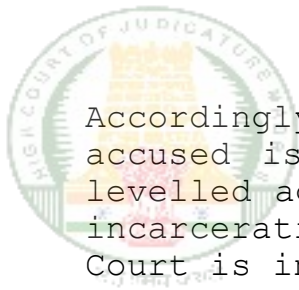
7.The learned Additional Public Prosecutor would submit that the trial Court had clearly observed that the evidence of the victim girl, medical records and expert opinion clearly proved the case of the prosecution; that the victim girl was subjected to aggravated penetrative sexual assault by the first accused with the aid the second accused; that the prosecution has also proved that the victim girl was aged 14 years at the time of alleged occurrence and that the contentions now canvassed by the petitioners are false and untenable.

8.As rightly contended by the learned counsel for the petitioners, in the complaint, P.W.1 has stated that while the first accused was committing the penetrative sexual assault, the second accused was standing outside and in the statement recorded under Section 161 Cr.P.C, the victim girl as well as her mother have also stated that the second accused was standing outside to see as to anyone is coming and in the evidence before the trial Court, P.W.2 has stated that initially the second accused was holding her legs and then, he went outside and thereafter, the accused after disrobing her, had committed penetrative sexual assault.

9.The learned counsel appearing for the petitioners would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

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

11.Considering the very seriousness and gravity of the offence alleged and also the period of incarceration, this Court is not inclined to suspend the sentence of the first accused/main accused.



Accordingly, this Petition is dismissed in respect of tst accused is concerned. But, considering the nature of the charges levelled against the second accused and also the fact that he is in incarceration from the date of judgment i.e., from 29.11.2021, this Court is inclined to suspend the sentence.

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12. Accordingly, the relief of suspension of sentence and bail is granted to the second petitioner /A2 on the following conditions:-

(i) the second petitioner/A2 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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 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 second petitioner/A2 shall appear before the trial Court on all working days at 10.30 am., 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/-

06/09/2022

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

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 SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, MADURAI.

2 THE INSPECTOR OF POLICE
AWPS, SEKKANNOORANI POLICE STATION,
USILAMPATTI, MADURAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1. C.C. to M/S.RAMSUNDARVIJAYRAJ S Advocate SR.No.9685.

ORDER
IN
CRL.M.P. (MD) No.6940 of 2022
in
CRL.A. (MD) No.6 of 2022
Date :06/09/2022

das

MK/VR/SAR.I/07.09.2022/5P/6C