



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

Wednesday, the Ninth day of November Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

WEB COPY

CRL MP(MD) No.7303 of 2022

IN

CRL A(MD)No.402 of 2022

ESAKKIPANDI

... PETITIONER/APPELLANT/SOLE ACCUSED
Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALAYMKOTTAI,
TIRUNELVELI DISTRICT.
CR.NO.17/2017

... 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 Execution of Sentence by granting bail in Special S.C.No.54/2019 dated 10.06.2022 on the file of the Learned Sessions judge and Special Court for protection of Children from the Sexual Offence Act Cases, Tirunelveli till the disposal of the Criminal Appeal.

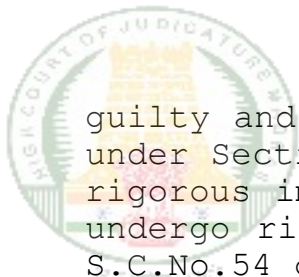
PRAYER IN CRL A(MD)No.402 of 2022:

To admit this appeal on file, to call for the records from the lower court in Special S.C.No. 54/2019 on the file of Sessions Judge & Special Court protection of Children From The Sexual Offence Act Cases, Tirunelveli District and set aside the Judgment dated 10.06.2022 by acquitting the accused and by allowing the 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 MR.V.KATHIRVELU, Senior Counsel for MR.K.PRABHU, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal 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 learned Sessions Judge, Special Court for Protection of Children from the Sexual Offence Act Cases, Tirunelveli District, dated 10.06.2022, in Special S.C.No.54 of 2019 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, who is the sole accused in this case, has been found



guilty and convicted by the learned Sessions judge, for the offence under Section 6 of POCSO Act, 2012 and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year, in Special S.C.No.54 of 2019 on the file of the learned Sessions Judge, Special Court for Protection of Children from the Sexual Offence Act Cases, Tirunelveli District. Set off under Section 428 Cr.P.C. was also ordered.

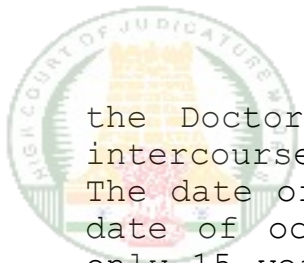
3.The case of the prosecution in brief:

The victim was aged about 16 years on the date of occurrence. On 22.11.2017, after purchasing Geomentary Box, she was waiting in the Bus Stand. At that time, the accused person approached the victim, shared his cellphone number and also spoke to him. Believing the words of the accused person, she was waiting in the Bus Stand on 29.11.2017, at about 03.00 p.m. From there she was taken to the Tirunelveli Junction and later stayed in the accused house. At that time, she was subjected to sexual intercourse. Later she was taken to the Bus Stand and left there. On the basis of the complaint given by the P.W.1, mother, the case was registered and during the course of investigation, the involvement of this petitioner came to light. So he was charged under Section 6 of the POCSO Act. On the side of the prosecution 17 witnesses were examined and 25 documents were marked.

4.At the conclusion of the trial, the trial Court came to the finding that the charge that was framed against the accused person was proved beyond the reasonable doubt. On that basis, the accused was found guilty and convicted and sentenced above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.The learned counsel for the petitioner would submit that during the course of investigation P.W.2, who is the victim girl, turned hostile. On the basis of the statement of the victim girl given under Section 164(5) Cr.P.C., the conviction has been rendered, which is not permissible under law. According to him, the statement of the victim girl under Section 164(5) Cr.P.C. has no evidentiary value unless it being corroborated with her evidence. During the course of evidence, the victim girl has stated that she was taken by the accused person to his Village and later on coming to know that the complaint was given by the mother, she was dropped in the Bus Stand. During the course of cross examination, she has denied the entire version of the prosecution. From the evidence it is seen that after the above said occurrence, she was married to some other boy.

6.The victim was also subjected to medical examination. No external or internal injuries are found on the private parts. But



the Doctor is opined that there is possibility of having intercourse before 3 or 5 days from the date of Medical Examination. The date of birth of the victim is stated to be 20.02.2002. On the date of occurrence namely on 22.11.2017, it is seen that she was only 15 years. So the contention on the part of the petitioner that there was a love affair cannot be taken into account. Considering the immaturity of the victim girl, it appears that the accused person kidnapped the victim girl and subjected her to sexual intercourse. On the basis of the circumstantial evidence only, the trial Court recorded the finding of guilt. Whether it is legal or not is a matter of consideration in the appeal. Moreover the Judgment is a recent origin. The victim girl is only aged about 15 years at the time of alleged occurrence. Even though the victim was married some other boy, considering the recent origin of the judgment, this Court is not inclined to allow this petition. This petition deserves to be dismissed.

7. Accordingly, this criminal miscellaneous petition is **dismissed**.

sd/-
09/11/2022

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/11/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SESSIONS JUDGE AND
SPECIAL COURT FOR PROTECTION OF CHILDREN
FROM THE SEXUAL OFFENCE ACT CASES,
TIRUNELVELI DISTRICT.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PALAYMKOTTAI,
TIRUNELVELI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISION
PALAYAMKOTTAI.

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

+1 CC to M/s.K.PRABHU, Advocate (SR-12718[I] dated 09/11/2022)

ORDER

IN

CRL MP(MD) No.7303 of 2022

in

CRL A(MD) No.402 of 2022

Date :09/11/2022

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