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CRL MP(MD)



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

Wednesday, the Thirteenth day of July Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.7486 of 2022

IN

CRL A(MD) No.39 of 2022

N.BALAMURUGAN

... APPELLANT/SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.760 OF 2017)

... 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 of imprisonment imposed by the Hon`ble Special Court for Exclusive Trial of Cases under Protection Of Children From The Sexual Offences Act, 2012, Virudhunagar At Sriviliputhur in Spl.S.C.No.18 of 2018 by the judgement Dated 08.12.2021 and enlarge the petitioner/appellant on bail, pending disposal of the above said Criminal Appeal(MD)No.39/2022.

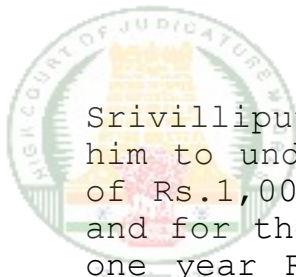
Prayer in CRL A(MD)No.39 of 2022 :

To call for the records and set aside the Judgment and Conviction dated 08.12.2021, by the Special Court For Exclusive Trial Of Cases Under Protection Of Children From The Sexual Offences Act, 2012, Virudhunagar At Srivilliputhur in Spl.S.C.No.18 of 2018 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.R.L.DILIPAN PANDIAN, Advocate for M/S.D.RAJABOOPATHY, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence passed in Spl.S.C.No.18 of 2018, dated 08.12.2021, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar at Srivilliputhur, till the disposal of this Criminal Appeal.

2.The learned counsel appearing for the petitioner submitted that the trial Court convicted the petitioner in Spl.S.C.No.18 of 2018, dated 08.12.2021, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar at



Srivilliputhur, for the offence under Section 366 IPC and sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months Simple Imprisonment and for the offence under Section 417 IPC, sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment and for the offence under Section 5(1) r/w 6 of POCSO Act, 2012, sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

3.The learned counsel for the petitioner submitted that there existed love affair between the petitioner and victim girl and that she was aged about 17 years on the date of occurrence. He further submitted that since the petitioner was in judicial custody for 90 days, he was granted statutory bail. He further 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.

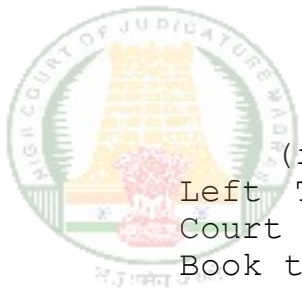
4.The learned Additional Public Prosecutor submitted that the prosecution has produced the SSLC Certificate, wherein, the date of birth of the victim has been shown as 07.05.2000 and she was only 17 years and 5 months and 11 days at the time of alleged occurrence. He further submitted that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

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

6.The learned counsel 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 appeal and further the criminal appeal 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.

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

- (i) The petitioner shall 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 learned Sessions Judicial Magistrate Court, Rajapalayam,



(ii) 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

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(iii) The petitioner shall appear before the concerned Court on all working days 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/-

13/07/2022

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14/07/2022

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

TO

1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SESSIONS JUDICIAL MAGISTRATE, RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

4 THE INSPECTOR OF POLICE, RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.

5 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+2 CC to M/s.D.RAJABOOPATHY, Advocate (SR-7042[I] dated
13/07/2022)

ORDER IN

CRL MP(MD) No.7486 of 2022
IN

CRL A(MD) No.39 of 2022
Date :13/07/2022

RS/VR/SAR.3 (14.07.2022) 3P-9C

<https://www.mhc.tn.gov.in/judis>