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CRL MP(MD)



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

Friday, the Eighth day of July Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.7774 of 2022

IN

CRL A(MD) No.488 of 2021

VINOTHKUMAR

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME.NO.8/2020

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed by the Special Court for Exclusive Trial of Cases under Protection of Children From The Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur in Spl.S.C.No.52 of 2020 by judgment dated 11/11/2021, pending the disposal of the main Criminal Appeal.

Prayer in CRL A(MD).488/2021 :

To call for the records in the judgment of the Special Court for Exclusive Trial of Cases Under Protection of Children From The Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur in Spl.S.C.No.52 of 2020 by judgment dated 11.11.2021 and set aside the same.

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.RAMASAMY, 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 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, Virudhunagar at Srivilliputhur, in Spl.S.C.No.52 of 2020, dated 11.11.2021, till the disposal of the appeal.

2.The case of the prosecution is that the victim girl was studying seventh standard in Government Higher Secondary School, Chathrapatti village and due to covid 19, she along with one Jeyalakshmi has managed to go to work in Ramasubbu bandage company. On 21.03.2020, when the victim girl went to her work, the petitioner



made sweet coated words as if, he had fallen love with and called her to nearby Subham Bakery and at about 06.00 pm, he hugged the victim girl and pressed her chest part and also kissed her.

3. On the basis of the complaint lodged by the victim's mother, FIR came to be registered in Crime No.8 of 2020, for the offence under Sections 5(1), 6, 7, 8 of POCSO Act and Sections 328, 506(ii) IPC. After completing the investigation, the respondent Police has laid the final report and the case was taken on file in Spl.S.C.No.52 of 2020.

4. During trial, 13 witnesses have been examined as P.W.1 to P.W.13 and 14 documents were exhibited as Ex.P.1 to Ex.P.14. The defence had examined two witnesses as D.W.1 and D.W.2. Whereas, the accused have adduced neither oral nor documentary evidence.

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 11.11.2021, and convicted the petitioner/A3 and sentenced him to undergo five years imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to undergo six months imprisonment for the offence under Section 8 r/w 7 of POCSO Act. Aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner/A3 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 in Crl.M.P.(MD)No.10049 of 2021 and Crl.M.P.(MD)No.5220 of 2022 in Crl.A(MD)No.488 of 2021, vide orders, dated 30.11.2021 and 25.04.2022. The petitioner/appellant has now come forward with the third application for suspension of sentence.

7. 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.

8. The learned Additional Public Prosecutor 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 sentence.

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

10. 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 the points raised by the petitioner are arguable points involved in this criminal appeal and



further the criminal appeal is not likely to be taken up : al 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 suspension of sentence.

11. 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 Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilliputhur ;

(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 petitioner 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/-

08/07/2022

/ TRUE COPY /

11/07/2022

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,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



CRL MP(MD)



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2 THE INSPECTOR OF POLICE, RAJAPALAYAM ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT.

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

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+1 CC to M/s.S.RAMASAMY, Advocate (SR-6807[I] dated 08/07/2022)

ORDER

IN

CRL MP(MD) No.7774 of 2022

IN

CRL A(MD) No.488 of 2021

Date :08/07/2022

RS/VR/SAR.3 (11.07.2022) 4P-5C