



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.M.P.(MD)No.7971 of 2022
in
CRL.A.(MD)No.428 of 2022

K.BALAMURUGARAJA

... PETITIONER / APPELLANT

Vs

THE STATE REP.BY,
1 THE DEPUTY SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DIVISION,
VIRUDHUNAGAR.

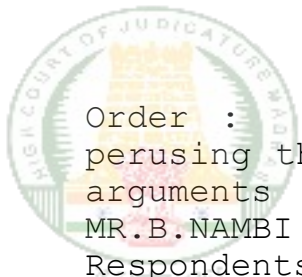
2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR
(CRIME NO.6 OF 2018)

... RESPONDENTS / RESPONDENTS

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 the substantive sentence of 3 Years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo 6 months Simple Imprisonment for the offence punishable under section 8 of the POCSO Act and two years Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 6 months Simple Imprisonment for the punishable under section 12 of the POCSO Act passed against the petitioner/appellant in Spl.S.C. No. 31 of 2018, dated 21.06.2022 on the file of the learned Special Judge for Trial of offences under POCSO Act, Virudhuangar District at Srivilliputhur till the disposal of the appeal in Crl.A(MD)No.428 of 2022 and release the Petitioner / Appellant / Accused on bail.

Prayer in CRL.A.(MD)No.428 of 2022:

To call for the records and set aside the order of conviction and sentence dated 21.06.2022 passed by the Learned Special judge for Trial of Offences under POCSO Act, Virudhunagar District at Srivilliputhur in Spl.S.C.No.31 of 2018 for the charge under Sections 8 and 12 of the POCSO Act to undergo 3 Years Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default to undergo 6 months Simple Imprisonment and to undergo two years Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 6 months Simple Imprisonment respectively with a direction to suffer concurrently and allow this Criminal Appeal in Crl.A.(MD)No.428 of 2022, acquit the Appellant.



Order : This petition coming up for orders on this case, on perusing the petition filed in support thereof and upon hearing the arguments of MR.V.SASIKUMAR, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondents, the court made the following order:-

WEB COPY

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Special Judge, Special Court for Exclusive Trial of cases under POCSO Act, Virudhunagar, in Spl.S.C.No.31 of 2018, dated 21.06.2022, till the disposal of the appeal.

2.The case of the prosecution is that the accused was running a petty shop and he used to pinch and touch the hands of the school girls, whenever they came to his shop and also made sexual assault on them. On the basis of the complaint lodged, FIR came to be registered in Crime No.6 of 2018, for the offence under Sections 8, 12 and 14 of POCSO Act and Sections 3(1)(r) (4 counts), 3(1)(s) (4 counts) SC/ST (POA) Act. After completing the investigation, the respondent Police has laid the final report and the case was taken on file in Spl.S.C.No.31 of 2018.

3.During trial, 18 witnesses have been examined as P.W.1 to P.W.18 and 18 documents were exhibited as Ex.P.1 to Ex.P.18 and two material objects as M.O.1 and M.O.2. But, the accused has adduced neither oral nor documentary evidence.

4.The learned Special Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment, dated 21.06.2022, convicting the petitioner for the offence under Section 8 of POCSO Act and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default, to undergo six months imprisonment; and for the offence under Section 12 of POCSO Act, to undergo two years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months simple imprisonment respectively. Aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner has preferred the above appeal.

5.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.

6.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.

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



8.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 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 suspension of sentence.

9.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 learned Special Judge for POCSO Act, 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/-

13/07/2022

/ TRUE COPY /

15/07/2022

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

2 THE DEPUTY SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DIVISION,
VIRUDHUNAGAR.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR

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

+1 CC to M/s.V.SASIKUMAR, Advocate (SR-7165[I] dated 15/07/2022)

ORDER

IN

CRL.M.P. (MD) No.7971 of 2022
in

CRL.A. (MD) No.428 of 2022

Date :13/07/2022

DAS

MK/PN/SAR.I/15.07.2022/4P/6C