

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

|               |            |
|---------------|------------|
| RESERVED ON   | 27.07.2022 |
| PRONOUNCED ON | 29.07.2022 |

PRESENT

**The Hon`ble Mr.Justice K.MURALI SHANKAR**

CRL MP(MD) No.7867 of 2022

IN

CRL A(MD) No.420 of 2022

RAJESHKUMAR

... PETITIONER/PETITIONER/ACCUSED

**Vs**

STATE REP.BY  
THE INSPECTOR OF POLICE  
ALL WOMEN POLICE STATION,  
RAJAPALAYAM,  
VIRUDHUNAGAR DISTRICT.  
(CRIME NO.14 OF 2018)

... RESPONDENT/RESPONDENT/COMPLAINANT

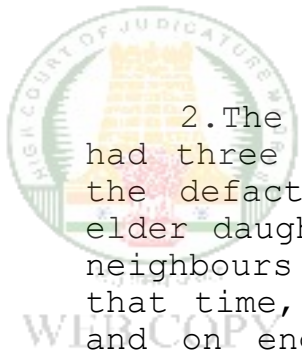
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner vide judgment made in Spl.S.C.No.35 of 2019, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur, dated 20.06.2022 pending disposal of the above Criminal Appeal.

**Prayer in CRL A(MD)No.420 of 2022:**

To call for the records pertaining to Spl.S.C.No.35/2019, on the file of the Learned Sessions Judge, The Special Court for Exclusive Trial of Cases Under Protection Of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur, dated 20.06.2022, by allowing this Criminal Appeal and to acquit the Appellant/Accused.

**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 M/S.THIRUNAVUKKARASU.M, 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 passed in Spl.S.C.No.35 of 2019, dated 20.06.2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur, till the disposal of this Criminal Appeal.



2.The case of the prosecution is that the defacto co-accused it had three daughters, that on 14.07.2018 at about 11.00 p.m., when the defacto complainant woke up to attend the natural call, her elder daughter was found missing, that she informed the same to the neighbours immediately and they had searched the victim girl and at that time, the victim girl was coming at Ilandhaikulam Kanmai Road and on enquiry, she disclosed the fact that the petitioner was loving her and by promising to marry her had taken her to Ilandhaikulam Kanmai and had sexual intercourse with her and that the petitioner had sexual intercourse with the victim girl many times in similar manner and also scolded and threatened her with dire consequences if she discloses the matter to anyone.

3.On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.14 of 2018 against the petitioner for the alleged offences under Sections 417, 294(b), 376 and 506(1) IPC and Sections 5(1) and 6 of Protection of Children from Sexual Offences Act.

4.The respondent police, after completing the investigation, has filed a final report and the case was taken on file in Spl.S.C.No.35 of 2019 on the file of the Special Court for POCSO Act Cases, Virudhunagar at Srivilliputtur.

5.During the trial, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and exhibited 20 documents as Ex.P.1 to Ex.P.20, whereas, the accused has examined 1 witness as D.W.1 and exhibited 2 documents as Ex.D.1 and Ex.D.2.

6.The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the impugned judgment dated 20.06.2022 convicting the petitioner/sole accused for the offences under Sections 5(1) r/w 6 of Protection of Children from Sexual Offences, Act, 2012, and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment. Aggrieved by the said judgment of conviction and sentence, the petitioner preferred the present appeal along with the above miscellaneous petition for suspension of sentence.

7.The learned Senior counsel for the petitioner would submit that the victim girl in her 164 Cr.P.C. statement has not stated that she was subjected to aggravated penetrative sexual assault, that the trial Court failed to consider that the petitioner was at Coimbatore at the time of the alleged occurrence and he was working as a Quality Controller in D.W.1's company, that the petitioner has also exhibited the attendance register as Ex.D.2 to prove that he was in Coimbatore at that time, that the prosecution has not at all recovered the cell phone, from which the alleged call was made and that the evidence of P.W.2 does not have any corroboration in response to the alleged offence.



8.The learned Additional Public Prosecutor would submit that the victim girl was aged 16 years 3 months and 10 days at the time of the alleged occurrence, that the statement given by the victim girl under Section 164 Cr.P.C., and the evidence adduced before the trial Court are trustworthy and believable, that there is absolutely no motive or ill will for implicating the petitioner by P.W.1 and P.W.2, that there was no evidence to show that the petitioner was in Coimbatore at 09.00 or 10.30 p.m., that the petitioner was absconding for nearly 9 months after registration of the FIR and that there is every possibility for the petitioner to abscond once again if he is enlarged on bail.

9.The learned Additional Public Prosecutor would further submit that when the petitioner has filed an application for anticipatory bail in CrI.O.P.(MD)No.4498 of 2019, taking note of the undertaking affidavit filed by the petitioner that he is ready to marry the victim girl, this Court has granted anticipatory bail directing the petitioner to comply with the undertaking affidavit given by him. He would further submit that the said condition was not at all complied with by the petitioner

10.The learned Senior counsel for the petitioner would further submit that subsequently, the victim girl had eloped with some other person and as such, the question of complying with the undertaking given by the petitioner does not arise at all.

11.Considering the above facts and circumstances of the case and also the seriousness and gravity of the offence alleged against the petitioner and also taking note of the fact that the petitioner is in incarceration from the date of judgment i.e., on 20.06.2022, this Court is not inclined to suspend the sentence imposed on the petitioner.

12.In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-

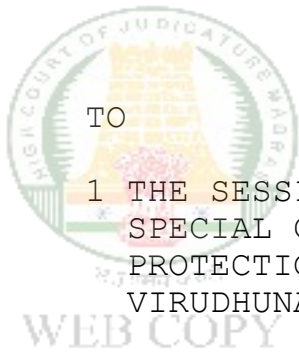
29/07/2022

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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 SESSIONS JUDGE,  
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER  
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012,  
VIRUDHUNAGAR DISTRICT.
- 2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, RAJAPALAYAM,  
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL MP(MD) No.7867 of 2022  
IN  
CRL A(MD) No.420 of 2022  
Date :29/07/2022

RS/SVR/SAR.2 (02.08.2022) 4P-5C