



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

Tuesday, the Eighth day of November Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.11963 of 2022
in
CRL A(MD)No.615 of 2022

MUTHAIAH @ MALLI

... PETITIONER/APELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SILAIMAN POLICE STATION,
MADURAI.

... 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 Special SC No.26/2018, dated 26.07.2019 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai and enlarge the petitioner on bail till the disposal of appeal and thus render justice.

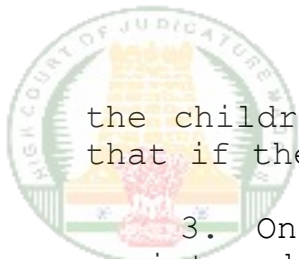
PRAYER IN CRL A(MD)No.615 of 2022:

To call for the records relating to the judgment in Special S.C.No.26 of 2018, dated 26.07.2019 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai and set aside the same and acquit the appellant/accused from of all charges leveled against him.

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. SENTHIL KUMAR.R, Advocate for the petitioner and of M/S.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.26 of 2018, dated 26.07.2019.

2. The victims are aged about 10 and 11 years and they were studying 4th and 5th standard, respectively at the time alleged occurrence. On 23.02.2018, while they were playing in the cement platform, the accused pulled their hands and dragged them into his house and committed penetrative sexual assault on them repeatedly. On 24.03.2018 also the accused done the same offence. When



the children cried in pain, the accused threatened them with violence that if they disclose the matter to others, he would kill them.

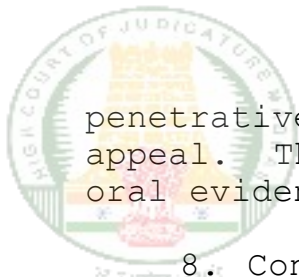
3. On the basis of the aforesaid occurrence, the case was registered. After completing the process of investigation, the final report was filed and the same was taken cognizance. To prove the charges, the prosecution examined 14 witnesses and marked 16 documents and one material object was marked. At the conclusion of the trial process, the trial Court found that the prosecution has proved the case beyond all reasonable doubts and accordingly, the accused was convicted under Section 5(m)(1) r/w 6 (2 counts) of the Protection of Children from Sexual Offences Act, and sentenced to undergo 10 years rigorous imprisonment for each count with a fine of Rs.5,000/- for each in default to undergo 2 years simple imprisonment and convicted for the offence under Section 506(ii) IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo 2 years simple imprisonment.

4. Challenging the aforesaid conviction and sentence, the sole accused preferred the criminal appeal. Pending appeal, this petition has been filed seeking suspension of sentence.

5. The learned counsel for the petitioner submitted that the witnesses, examined in this case on the side of the prosecution, were the relatives of P.W.1. No materials have been collected during the course of investigation to implicate this petitioner. There is 5 days delay in sending the victim girls for medical examination. Even the medical examination did not show any trace of semen in the private parts of the victims.

6. Per contra, the learned Additional Public Prosecutor submitted that it is a case of premature sexual assault upon the victims, who are only aged about 10 and 11 years. The prosecution has proved its case without any doubt and hence, no interference is called for.

7. Perusal of the records shows that the victims are aged about 10 and 11 years at the time of the alleged occurrence. They were dragged into the house of the petitioner and subjected to sexual penetrative assault by him repeatedly. They were also threatened with knife not to disclose the same to others. They were also criminally intimidated. The evidence of the victim girls relied upon by the trial Court was cogent and natural, the question, whether the evidence of the victim girls can be relied upon, is a matter for consideration in the appeal. The delay in sending the victim girl to medical examination cannot be a matter for consideration at this stage. Whether the delay affected the prosecution is also a matter for consideration in the appeal. The medical examination of the victim girls shows that their hymen were



penetrative sexual assault is a matter for consideration in the appeal. The medical evidence of the victim girls corroborates their oral evidence.

8. Considering the age of the victim girls and the manner, in which the above offence is said to have taken place, I am of the considered view that the relief of suspension of sentence cannot be extended for such nature offence. I find no reason to entertain this petition. Accordingly, this Criminal Miscellaneous Petition is **dismissed**. Since the judgment is of the year 2019 and the records have also been called for, the petitioner can argue the main appeal.

sd/-
08/11/2022

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

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TO

1. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
2. THE INSPECTOR OF POLICE
SILAIMAN POLICE STATION,
MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.11963 of 2022
in
CRL A(MD) No.615 of 2022
Date :08/11/2022

RK/SSS/SAR-4 (11/11/2022) 3P/4C