



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

Monday, the Twenty Second day of August Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.9062 of 2022
in
CRL.A. (MD) .No.482 of 2022

RANJITH

... PETITIONER/APPELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
NACHIYARKOVIL POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO. 310 OF 2018).

... RESPONDENT/RESPONDENT

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 in Spl.S.C.No.77 of 2019 (Old SCC 43/2018) Dated 13.07.2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and enlarge the petitioner of bail pending disposal of this Crl.Appeal.

PRAYER in CRL.A. (MD) .No.482 of 2022 :

Pleased to call for the records and set aside the conviction and sentence imposed by the trial court by its judgment passed in Spl.S.C.No.77 of 2019 (Old SCC.433/2018) dated 13.07.2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur 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. ARUN PRASAD.A., 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 on the petitioner/accused by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.77 of 2019 (Old SCC No.43 of 2018), dated 13.07.2022, till the disposal of the Criminal Appeal.



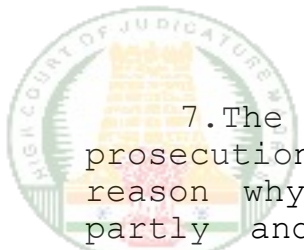
2.The case of the prosecution is that the de-facto co-accused it had a daughter aged 16 years, that her daughter used to go to school by private van belonging to one Babu, that the accused used to come as acting driver in the said van, that the accused made a phone call to her number on 14.09.2018 and asked her to come out from the house and if she did not come out, he would come into the house and would quarrel with her parents, that on 15.09.2018 at about 01.30 midnight, while the de-facto complainant and her family members were on sleep, the victim left the house and came to the main road and at that time, the accused along with one person were standing near the Tavera Car and wanted to talk with her, that when the victim questioned him, she was dragged into the car and proceeded to Kumbakonam-Sakkottai road, that the accused suddenly tied a thali on her neck, that thereafter, the accused had taken her to his paternal uncle at Sembanarkovil and they had stayed there, that during their stay, the accused had sexual intercourse with her and that subsequently, on coming to know that the victim's mother had already lodged a complaint before the respondent police, both the victim girl and the accused appeared before the respondent police.

3.On the basis of the complaint lodged by the victim's mother, FIR came to be registered in Crime No.310 of 2018 for the offence under Section 363 IPC. Subsequently, after recording the statement of the victim girl and secret investigation, the case was altered to Section 366 IPC, Section 3(a) r/w 4 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, 2006. The respondent after completing the investigation, has laid the final report against the petitioner/accused on 16.11.2018 and the case was taken on file in Spl.S.C.No.77 of 2019.

4.During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 14 documents as Ex.P1 to Ex.P14 and 6 Material Objects as M.O.1 to M.O.6. The defence has adduced neither oral nor documentary evidence.

5.The learned Special Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 13.07.2022 and convicted the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one year Rigorous Imprisonment and found not guilty for the offence under Section 3(a) r/w 4 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, 2006 and acquitted him. Aggrieved by the said Judgment of conviction and sentence, the petitioner/accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.



7.The learned counsel for the petitioner would submit the prosecution has not come with the true version and that is the reason why the trial Court has disbelieved the prosecution case partly and that the trial Court has erroneously come to the conclusion that the petitioner had committed the offence under Section 366 IPC. He would further submit that even according to the prosecution, the victim girl alone had come out of the house voluntarily and the said important factum was not at all taken into account by the trial Court. He would further submit that since the parents of the victim had arranged marriage for the victim girl, the victim came out of her house and this fact was spoken by the victim in her earlier statement, but the said factum was also not appreciated by the trial Court. He would further submit 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 would submit that the victim girl was only 16 years 3 months and 1 day at the time of alleged occurrence and her date of birth is 14.06.2022 and as such, the victim girl comes under the category of child as mentioned in Section 2(d) of POCSO Act, that the learned Sessions Judge while acquitting the accused from the charges under the provisions of POCSO Act and the Child Marriage Act, had rightly come to the conclusion that the accused had committed the offence under Section 366 IPC and the evidence of P.W.1 and the evidence of eye witnesses P.W.3 and P.W.2 corroborates with each other. He would further submit that consent of minor would be of no defence to the charge of kidnapping. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

9.Considering the above facts and circumstances of the case and also considering the seriousness and gravity of the offence alleged against the petitioner and also the fact that the petitioner has been in incarceration from the date of Judgment i.e., on 13.07.2022, this Court is not inclined to grant suspension of sentence to the petitioner at this point of time.

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

sd/-

22/08/2022

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



TO

1. THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT,
THANJAVUR.
2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
3. THE INSPECTOR OF POLICE,
NACHIYARKOVIL POLICE STATION,
THANJAVUR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL MP(MD) No.9062 of 2022
in
CRL.A.(MD).No.482 of 2022
Date :22/08/2022

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