



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

Wednesday, the Seventeenth day of August Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.9580 of 2022
in
Crl.A.(MD)No.498 of 2022

PRABAKARAN

... PETITIONER / APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
DEVARKULAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.74/2017

... RESPONDENT / RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to grant an order of suspension of sentence imposed in the conviction Judgment passed in Special C.C no.140 of 2019 dated 26.07.2022 on the file of the Learned Sessions Judge, Special court for POCSO act cases, Tirunelveli and enlarge the petitioner / Appellant / Sole Accused on bail, pending disposal of the Criminal Appeal.

Prayer in Crl.A.(MD)No.498 of 2022:

To call for the records relating to Special C.C.No.140 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli passed in Special C.C.No.140 of 2019 dated 26.07.2022 and set aside the same and to acquit the Appellant / Sole Accused by allowing the present Criminal Appeal.

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.SARAVANAKUMAR.C, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, While admitting the Crl.A., the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.C.C.No.140 of 2019, dated 26.07.2022, on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the petitioner had committed sexual harassment on the victim girl, who is a minor.

3. On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.74 of 2017.

4. The respondent police, after completing the investigation, has laid a final report for the offence under Section 363(A) IPC and Section 12 of POCSO Act, 2012.

5. During the trial, the prosecution has examined 20 witnesses as P.W.1 to P.W.20 and exhibited 28 documents as Ex.P.1 to Ex.P.28, whereas, the accused has adduced neither oral nor documentary evidence.

6. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 26.07.2022 convicting the petitioner/accused for the offence under Section 363 IPC and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months Rigorous Imprisonment. The Trial Court has suspended the sentence imposed on the petitioner till 23.08.2022. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. The learned counsel for the petitioner would 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. He would further submit that the petitioner has already paid fine amount.

8. The learned Additional Public Prosecutor appearing for the respondent would submit 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 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.



11. Accordingly, the relief of suspension of sentence is granted to the petitioner on the following conditions:-

(i) The petitioner shall 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 Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal 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/-

17/08/2022

/ TRUE COPY /

17/08/2022

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

TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES, TIRUNELVELI.
- 2 THE INSPECTOR OF POLICE
DEVARKULAM POLICE STATION, TIRUNELVELI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.SARAVANAKUMAR, Advocate (SR-8580[I] dated 17/08/2022)

ORDER

IN

Crl.M.P(MD)No.9580 of 2022
in

Crl.A.(MD)No.498 of 2022

Date :17/08/2022

CSM

<https://www.mhjn.gov.in/disII/17.08.2022/3P/5C>