



CRL.M.P.(MD)No.11336 of 2022

CRL.M.P. (MD)No.11336 of 2022
in
CRL.A. (MD)No.575 of 2022

G.ILANGO VAN, J.

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed upon the petitioner in Special SC No.37 of 2016, dated 29/03/2022 by the Special Court for exclusive trial of cases under POCSO Act, 2012, Sivagangai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that the victim is aged about 4-1/2 years. PW1 is the mother of the victim. One Abirami's house is situated opposite to the house of the accused and the victim was playing with the above said Abirami and later found missing. When search was made, they went to the house of the accused, she was found there crying and her bottom dress was also missing. At that time, the accused was cleaning his private part. On the basis of the complaint given by the de-facto complainant, a case in Crime No. 9 of 2016 was registered for the offence under section 6 r/w 5 (m) (n) of the POCSO Act.



CRL.M.P.(MD)No.11336 of 2022

3.To prove the charge, on the side of the prosecution, 17 witnesses examined and 21 documents were marked, apart from 4 material objects. No oral or document evidence was adduced on the side of the accused.

4.At the conclusion of the trial process, the trial court came to the conclusion that the charge that was framed against the accused was proved beyond reasonable doubt and accordingly, he was convicted and sentenced to undergo 10 years RI and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one month for the above said offence.

5.Now challenging the above said conviction and sentence, appeal has been preferred. Pending appeal, this petition has been preferred seeking suspension of sentence.

6.The learned counsel appearing for the petitioner would submit that there is a delay of one day in preferring the complaint and PW1 is not an eye witness to the above said occurrence; even though the evidence of PW1 is not convincing, there was motive between the accused and PW1, over which, the above said false complaint has been lodged.

7.But the learned Additional Public Prosecutor would submit that the evidence of PW2/victim is more than



sufficient enough to record a finding of conviction;
absolutely, no motive between PW1 and the accused.

WEB COPY

8. Reading of the evidence of the victim shows that there was an attempt on the part of the petitioner to have penetrative sexual assault on the victim. She has demonstrated the event by way of sign and verbal. Believing the words of the victim, the trial court has recorded the finding of conviction.

9. But the learned counsel appearing for the petitioner by relying upon the evidence of the victim, would argue that there was previous enmity between the accused and PW1; The victim girl has stated that the petitioner was not in talking terms.

10. But I am unable to convince myself to the allegation of the above said previous motive between them that such a false complaint has been given by using PW2 as a tool. PW2 is only aged about 4-1/2 years at the time of the occurrence and during her evidence, she was aged about 5 years. As mentioned earlier, she has given a clear picture about the event that took place. So, I find no reason to suspend the conviction and sentence imposed by the trial court.

11. In the result, this criminal miscellaneous



CRL.M.P.(MD)No.11336 of 2022

petition fails and the same is **dismissed**.

WEB COPY

17.11.2022

Index : Yes/No
Internet : Yes/No
er

G. ILANGO VAN, J.



WEB COPY



CRL.M.P.(MD)No.11336 of 2022

er

CRL.M.P. (MD) No.11336 of 2022
in
CRL.A. (MD) No.575 of 2022

17.11.2022