



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

Thursday, the Twenty Second day of September Two Thousand and
Twenty Two

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PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.10524 of 2022

IN

CRL A(MD) No.291 of 2022

SURESHKUMAR

... APPELLANT/PETITIONER

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.

... 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 against the petitioner in Spl.SC No.51/2019 dt.25/3/2022 passed by the learned Special Court for Exclusive Trial of Cases under POCSO act Cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A(MD)No. 291 OF 2022:

Pleased to call for the records in SPL.S.C.No.51 of 2019 dated 25.03.2022 passed by the Learned Special Court for Exclusive Trial of Cases under POCSO Act cases, Virudhunagar District at Srivilliputhur and to set aside the same.

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.KARUPPASAMY PANDIYAN.G, Advocate for the petitioner and of Mr.S.MANIKANDAN, Government Advocate(crl.side) on behalf of the Respondents the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed 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 25.03.2022, in S.C.No.51 of 2019 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.



2.The learned counsel for the petitioner submitted that the petitioner, who is the first accused in this case, has been convicted by the learned Sessions judge, for the offence under Section 363 of IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of 6 months and for the offence under Sections 8 r/w 7 of POCSO Act, 2012, he was convicted and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 6 months, in S.C.No.51 of 2019 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. Both the sentence were ordered to be run concurrently and the set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

The victim girl was aged about 15 years and studying in 10th standard, that on 05.07.2019 at about 03.00 p.m., the petitioner/appellant went to the victim girl's school and informed the victim girl that he would arrange scholarship from MLA fund, for which, photograph has to be fixed in the application, that when the victim girl as well as the headmistress denied for the same, the petitioner approached the second accused, who is working as staff in the said school and she has sent the victim girl along with the first accused at about 3.30 p.m., under compulsion, that the first accused thereafter had taken the victim girl in his two wheeler to Nenmeni Kankaikarai, Putthur, with an intention to commit sexual assault and thereby, he touched upon her hip, neck and chest, that he had removed her school uniform dresses and he has taken photographs of the victim girl in a nude manner with his cell phone, that when the victim girl objected the same and raised alarm and tried to run away from the place, he scolded her in filthy language, that thereafter he threatened the victim girl that he will murder her if she disclose the same to anyone, that the petitioner gave her Rs.200 to purchase footwear and to take passport size photo on the next day, but she refused to receive the money, that thereafter, the petitioner had forcibly taken her to school and dropped her and that on the basis of the information furnished by the victim girl, her mother lodged the complaint.

4.On the basis of the complaint lodged by the mother of the victim girl, FIR came to be registered in Crime No.15 of 2019 against the petitioner and one Kala for the offences under Sections 294(b) and 506(i) IPC and Sections, 7,8,16 and 17 of POCSO Act.

5.During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 16 documents as Ex.P1 to Ex.P16 and marked material objects as M.O.1 and M.O.2, whereas the accused have

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Judge, upon consideration of the evidence and on hearing the arguments advanced on either side, found the petitioner guilty and convicted and sentenced him as above.

6.The learned counsel for the petitioner would submit that the age of the victim is stated to be 15 years. When the police arrived for enquiry, the earlier complaint that was given has been suppressed. That was stated to be at 11.30 a.m. and that was not placed before the Court. As per the evidence of PW1 as stated in her evidence that on 05.07.2019, when the police team arrived in her house at about 08.00 p.m., she again given a statement. But during the Chief examination, she has stated that at about 11.00 p.m. on 05.07.2019, she gave a complaint before the respondent police. According to the learned counsel for the petitioner, this self explanatory version of PW1 shows that real occurrence has been suppressed. PW2 also corroborated the evidence of the PW1, on this aspect. She would say that on 05.07.2019 at about 08.00 p.m., when she identified the accused, PW1 was also present along with her. According to him, the arrest is also doubtful. Moreover, the age of the victim girl has not been properly established during the course of trial. Only xerox copy of certificate issued by PW7 mentioning the date of birth of the victim, was marked.

7.The learned Additional Public Prosecutor would submit that the evidence of the victim girl has been corroborated by other witnesses in material particulars. PW4 and PW10 are the eye witnesses to the occurrence. According to the learned Additional Public Prosecutor, considering the gravity of offence, no suspension of sentence may be ordered.

8.The earlier application filed by the petitioner was dismissed by this Court on 14.07.2022, considering the gravity of the offence. As I mentioned earlier, PW2 has given a clear picture about the event that took place. She was taken under the guise of taking a photograph for applying scholarship. The petitioner told the victim that he will take the victim to take photograph, but she was taken to Nenmeni Kanmoi, where she was sexually abused. She was also directed to remove the clothes and photographs were taken. So the evidence of this victim girl shows that there was clear misbehaviour on the part of the petitioner to the victim girl. The offence of such nature must be seriously looked into.

9.It is further submitted that even as per the evidence of PW2, she was taken to the kanmoi area, it is alleged that she raised no objection by shouting, according to the learned counsel for the petitioner, the victim girl was also consenting party. But this argument cannot be accepted. A immature girl has been sexually abused by the petitioner. Even though the contradiction that has been pointed out by the counsel for the petitioner are available, that can be matter for consideration only at the time of appeal.



10. I find no reason to entertain this petition and the petition deserves to be dismissed. Accordingly, dismissed.

sd/-
22/09/2022

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/09/2022

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 PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT, 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
RAJAPALAYAM, VIRUDHUNAGAR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP(MD) No.10524 of 2022
IN
CRL A(MD) No.291 of 2022
Date :22/09/2022

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SA/SBN/SAR.1/30.09.2022/4P/5C