



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

Wednesday, the Ninth day of November Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.11959 of 2022

IN

CRL A(MD) No.613 of 2022

SHANMUGAVEL

... PETITIONER/APPELLANT/ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
TIRUNELVELI TOWN.
CRIME NO.1 OF 2013.

... RESPONDENT/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 namely R.Shanmugavel,S/o.V.Rajasekar in pursuant to the Judgment dated 18.08.2022 made in Spl.C.No.1 of 2019 by the Learned Special Court for POCSO Act Cases,Tirunelveli and enlarge him on bail pending disposal of the present appeal in the interest of justice.

PRAYER IN CRL A(MD)No.613 of 2022:

Pleased to call for the records and set aside the conviction and sentence passed by the Learned Special Court for POCSO Act cases, Tirunelveli made in Spl.C.No.01 of 2019 by judgment dated 18.08.2022.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.C.MUTHU SARAVANAN, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal Side), 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 Protection of Children from the Sexual Offence Act Cases, Tirunelveli District, dated 18.02.2022, in Special S.C.No.1 of 2019 and enlarge the petitioner on bail, pending disposal of the above

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2.The learned counsel for the petitioner submitted that the petitioner, who is the first accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 3(a) r/w 4(2) of POCSO Act, 2012 and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.40,000/- in default to undergo rigorous imprisonment for a period of one year and also convicted for the offence under Section 506(ii) IPC and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for a period of three months, in Special S.C.No.54 of 2019 on the file of the learned Sessions Judge, Special Court for Protection of Children from the Sexual Offence Act Cases, Tirunelveli District. The sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

The victim is aged about 13 years. The second accused is her mother. Ayyam Perumal is her father. Both mother and father are separated. On 18.11.2012, the mother namely second accused, who was living separately, came to the house, when the father was away and on false promise of shopping she was taken to a lodge called TVK Residency. In the above said lodge, the third accused, who was having illicit intimacy with second accused was waiting. The second and third accused took the child to Room No.210, where the first accused was waiting. Both of them left the child in the above room and went away. In the room, the first accused committed rape, criminally intimidation upon the victim. On the above said occurrence, the case was registered and after completing the investigation process final report was filed against the three accused persons. The case was split up against the accused No.2. Against the accused Nos.1 and 3 Spl.C.C.No.1 of 2019 was taken up for trial. During the pendency of the trial process 3rd accused was reported to be dead. So the charges against him abated. Only the first accused was tried in this case and on the side of the prosecution 20 witnesses have been examined and 13 documents were marked. No material objects have been exhibited. 4.At the conclusion of the trial, the trial Court found that the charges against the appellant under Section 3(a) r/w 4(2) of POCSO Act and Section 506(ii) IPC were proved by the prosecution beyond reasonable doubt. Therefore, the trial Court has convicted and sentenced the accused as stated above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.This petition has been filed by the petitioner on Medical Ground stating that due to Chronic Pancreatic decease, he was shifted from the Prison Hospital to the Government Hospital, Palayamkottai, for treatment. Now he has to undergo surgery. On

