



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

Monday, the Thirty First day of October Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.12881 of 2022
IN
CRL.A.(MD) No.649 of 2022

MARISELVAM

... PETITIONER/APELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
IN CRIME NO.1155/2017.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed by the Learned Special Court for POCSO Act Cass, Virudhunagar District at Srivilliputhur in Special Sessions Case No.17/2018 dated. 12/07/2022 and enlarge the petitioner/sole accused on bail, till the disposal of the Crl.A.

PRAYER IN CRL.A(MD) NO.649 OF 2022 :

Pleased to admit this appeal on file and call for the records from the Lower Court and set aside the Judgment passed by the Learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Special Sessions Case No.17 of 2018 dated 12.07.2022 by allowing this 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.MAYA PERUMAL S, Advocate for the petitioner and of MR.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, 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 POCSO Act Cases, Virudhunagar District at Srivilliputtur, dated 17.07.2022, in Special S.C.No.17 of 2018 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 sole accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of one year, in Special S.C.No.17 of 2018 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar at Srivilliputtur.

3.The case of the prosecution in brief:

The victim is aged about 5 years. The accused person is also a resident of the same village. He used to take the victim boy frequently to his house and sexually assaulted him. That was repeated for several times and finally on 29.11.2017 at about 3.15 p.m. the above said sexual assault again committed. On the basis of the above said occurrence, complaint was given and after completing the formalities of the investigation final report was filed before the concerned Special Court. On the side of the prosecution 11 witnesses have been examined, 10 documents were marked. On the side of the accused none was examined and no documents were marked. Ex.C.1 was also marked on the side of the Court.

4.At the conclusion of the trial, the trial Court came to the conclusion that the accused was found guilty for the offence punishable under Section 5(m) r/w 6 of POCSO Act and convicted and sentenced 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.The learned counsel for the petitioner submitted that Section 24 of the POCSO Act has not been properly followed. Even as per the allegations that has been made on the victim, there is no penetrative sexual assault. The neighbours were examined. So according to him, the above said lapse are sufficient to suspend the sentence.

6.Per contra, the learned Additional Public Prosecutor would submit that the offence on victim is very clear and the petitioner is aged about 23 years, who caused repeated sexual assault on the victim. So no interference is required for suspending the sentence.

7.PW1 is the mother of the victim. She has stated that on the particular date, the victim came crying and on enquiry, she was informed about the sexual assault. The victim has also stated about the sexual assault, which is unnatural.

8.Considering the gravity of offence and the manner in which it has been committed and considering the fact that if the petitioner is granted on bail by suspending the sentence, there is every



likelihood of making trouble to the victim, I am of the c opinion that this petition deserves to be dismissed.

9. Accordingly, this Criminal Miscellaneous Petition is **dismissed.**

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31/10/2022

/ TRUE COPY /

/11/2022

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,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR.
2. THE INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.12881 of 2022
IN
CRL.A. (MD) No.649 of 2022
Date :31/10/2022

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USK/GB/SAR-IV/07.11.2022/3P/5C