



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

Friday, the Ninth day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.14337 of 2022
IN
CRL A(MD) No.796 of 2022

V.ARUNKUMAR

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PAPANASAM,
THANJAVUR DISTRICT.
CRIME NO.6 OF 2019.

... RESPONDENT/COMPLAINANT

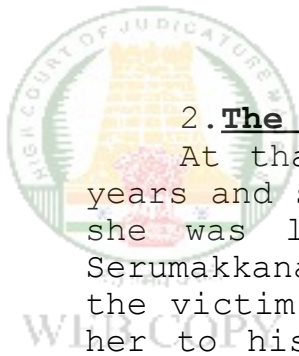
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence dt.21.9.2022 passed in Spl.SC.No.2 of 2020 against the Petitioner/Appellant by the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and the Petitioner/Appellant who is remanded to judicial custody after judgment be released on bail pending disposal of the above appeal.

PRAYER IN CRL.A(MD) .796/2022:

Pleased to call for the records and set aside the order of conviction and sentence passed on him by Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur in Spl.S.C.No.02 of 2020 dated on 21.09.2022 and allow this 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.SENTHIL KUMAR A, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence dated 21.09.2022 passed in Spl.S.C.No.02 of 2020 against the Petitioner / Appellant by the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and the Petitioner / Appellant who is remanded to judicial custody, after judgment be released on bail pending disposal of the above appeal.



2. The case of the prosecution in brief:-

At that time of occurrence, the victim girl was aged about 5 years and studying UKG at St. Annes Middle School, Pasupathikoil, and she was living with her grand mother in Pillaiyarkoil Street, Serumakkanallur. On 08.11.2019, the accused Arunkumar had enticed the victim girl and invited her to view a film in the laptop, taken her to his house, closed the door and misbehaved by touching her private parts with intention to rape. So, on the basis of the above said occurrence, the First Information Report has been filed and made charges against the accused under Sections 5(m) r/w. 6 of POCSO Act.

3. Before the trial Court, on the side of the prosecution, 17 witnesses were examined as P.W.1 to P.W.17 and 16 documents were marked as Ex.P.1 to Ex.P.16 and 3 material objects were marked as M.O.1 to M.O.3.

4. At conclusion of the trial, the trial Court has found that the accused has found guilty under Section 5(m) of POCSO Act, punishable under Section 6 of POCSO Act. Accordingly, the accused was convicted and sentenced to undergo 20 years of Rigorous Imprisonment with fine of Rs.50,000/- and in default to undergo Rigorous Imprisonment of further period of one year.

5. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the instant Miscellaneous Petition seeking suspension of sentence.

6. The learned Counsel for the Petitioner would submit that there is one day delay in preferring the complaint and stated that 15 days prior to the alleged occurrence, because of the over taking made by the accused, dispute arose between the defacto complainant and the accused, which was compromised in the Police Station, for which, no case was registered. Over the above said enmity only, the present complaint has been given. He would also rely upon the evidence of P.W.1 to P.W.3 to show that there was previous enmity between them and the arrest was doubtful. So that one Balakrishnan was not examined to prove the above said occurrence.

7. Per contra, the learned Additional Public Prosecutor would submit that the victim was aged 5 years at the time of occurrence and the accused sexually misbehaved to the victim girl. So, no further point is available for suspension of sentence.

8. P.W.2 is the victim, she has spoken about the alleged misbehaviour that was made by the accused person with her. So, absolutely there is nothing to doubt her evidence except the alleged motive. Even though the prosecution evidence has not stated anything, witness of D.W.1 on the side of the accused stated that the accused is studying in Polytechnic College and one Bala is the driver in mini bus. The father of the above said Bala and P.W.3 are



20.10.2019, the accused along with two persons were riding on a two-wheeler, at that time, the above said mini bus was not giving way to the accused's vehicle and the accused waylaid the bus and dispute arose between the Bala and the accused. But, compromise was made between them in the Police Station and at that time, the said Bala criticized the accused stating that only because of him, he was drawn to the Police Station. D.W.1 is examined to say that there was previous enmity between the above said Bala and the accused. But whether this enmity is enough for foisting a false case is the matter for consideration in the appeal.

9. Considering the age of the victim girl, this is not a fittest case to order the suspension of sentence.

10. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-

09/12/2022

/ TRUE COPY /

/12/2022

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

TO

- 1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
THANJAVUR.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PAPANASAM, THANJAVUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.14337 of 2022
IN

CRL A(MD) No.796 of 2022

Date :09/12/2022

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