



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

Monday, the Twenty Third day of January Two Thousand and Twenty
Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.232 of 2023

in

CRL A(MD)No.14 of 2023

VIJAI

... PETITIONER/APPELLANT

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
CRIME NO.6 OF 2018.

... 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 Cases, Virudhunagar District at Srivilliputhur in Special Sessions Case No.44 of 2018 dt.4.11.2022 and enlarge the Petitioner/Accused No.2 on bail, till the disposal of the Criminal Appeal.

PRAYER IN CRL A(MD)No.14 of 2023:

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, Virudhunagr District at Srivilliputhur in Special Sessions Case No.44 of 2018 dated 04.11.2022 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.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondents, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special Sessions Case No.44 of 2018, dated 04/11/2022 by the Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the criminal appeal.



2. The case of the prosecution in brief:-

On 28/02/2018 at about 8.30 am, A1 kidnaped the victim in front of her school in his bike to Vettai Perumal Kovil, Rajapalayam, where she was sexually assaulted and also threatened her. The above said incident was reported by the victim to her mother. On further enquiry by her mother, she has stated that six months prior to the occurrence, she was subjected to sexual assault by the petitioner/A2. On the basis of the above said occurrence, the case was registered in Crime No.6 of 2018.

3. After completing the investigation, final report was filed against the accused persons for the offences punishable under sections 363, 506(1), 109 IPC and sections 5(u)(1)(5(i) and 6 of the POCSO Act and it was taken on file in Special Sessions No.44 of 2018 by the trial court.

4. To prove the guilt of the accused, on the side of the prosecution, 13 witnesses have been examined and 22 documents marked, apart from that 7 material objects marked. On the side of the accused, 1 witness was examined and 1 document was exhibited.

5. At the conclusion of the trial, the trial court found the petitioner/A2 guilty for the offences under sections 363, 506(i) IPC, section 5(1) r/w 6 of POCSO Act, 2012 and sentenced him to undergo one year RI and imposed a fine of Rs.1,000/- with default clause for the offence under section 363 IPC; and to undergo 6 months RI and imposed a fine of Rs.1,000/- for the offence under section 506(i) IPC; and sentenced to undergo 10 years RI and imposed a fine of Rs.2,000/- with default clause for the offence under section 5(1) r/w 6 of POCSO Act, 2012 and ordered to run the sentences concurrently. Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by the petitioner.

6. Heard both sides.

7. The learned counsel appearing for the petitioner/A2 would submit that the occurrence said to have taken place in 2017-2018 and no specific allegation has been made against this petitioner in 2017 occurrence. It was a love affair between them and if at all, section 109 IPC only attracted against this petitioner and the time and date of the occurrence are differently stated; and during the course of recording 164 CrI.P.C statement, no allegation has been made out.

8. Per contra, the learned Additional Public Prosecutor would submit that there is a clear role that has been played by the petitioner and the medical evidence is also supported the case of the prosecution.

9. Now let us go to the evidence of the victim girl
<https://www.mhlgov.in/judis> ~~being given~~. She has stated that this petitioner continuously



troubling her demanding money and love and she was taken to [redacted] area, where she was subjected to penetrative sexual assault. Later, A1 also joined in the above said act. He also subjected her to penetrative sexual assault.

10. Reading of the victim statement shows that there was some sort of affair between herself and this petitioner, but the age of the victim is about only 14 years. So the contention on the part of the petitioner that there was love affairs between them, cannot be taken into account.

11. It appears that taking advantage of the immaturity of the child, she was subjected to continuous sexual assault by both the accused. The Medical Officer has also given a statement that injury was found on the private part of the victim and she was also found bleeding at the of examination.

12. So considering the above said offence, I am of the considered view that this is not a fittest case to suspend the sentence. All the matters can be taken into account at the time of hearing the main appeal.

13. In the result, this criminal miscellaneous petition is dismissed.

sd/-

23/01/2023

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/02/2023

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

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TO

- 1 THE SPECIAL JUDGE
FOR POCSO ACT CASES, VIRUDHUANGAR DISTRICT @ SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTEINDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.232 of 2023
in

CRL A(MD) No.14 of 2023

Date : 23/01/2023