



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

Thursday, the Sixth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.652 of 2023
in
CRL A(MD)No. 6 OF 2022

K.MOHANA PRAKASH

... PETITIONER/APPELLANT/ACCUSED NO.1

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SEKKANOORANAI POLICE STATION,
USILAMPATTI,
MADURAI DISTRICT.
(CRIME NO.425 OF 2014)

... RESPONDENT/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 and conviction imposed by the Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act Madurai dated 29.11.2021 made in Special S.C.No.14/2015 pending disposal of Crl.Appeal.

Prayer in CRL.A.(MD)No.6 of 2022:

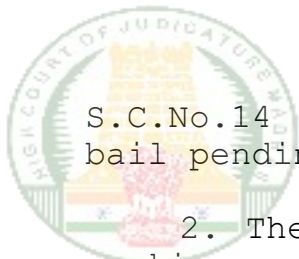
To call for the records and set aside the judgment dated 29.11.2021 made in Special S.C.No.14/2015 on the file of the court of Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Madurai and allow the above Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.GANDHI, Senior Counsel for MR.S.RAMSUNDARVIJAYRAJ, Advocate for the petitioner and of MR.S.S.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

Reserved on : 30.03.2023

Delivered on : 06.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai in Special



S.C.No.14 of 2015, dated 29.11.2021 and enlarge the petition on bail pending disposal of the appeal.

2. The case of the prosecution is that the victim's father was working as a watchman in C.K.Kalyana Mahal; that the victim who was studying 10th Standard at that time, used to go to the said Kalyana Mahal for studying; that on 09.10.2014 at about 09.00 pm, the victim girl as usual, was studying in the frontage of the Kalyana Mahal; that both the accused had stealthily come there and after closing her mouth with cloth forcibly took her to the underground of the Kalyana Mahal; that while the second accused was holding the legs of the victim girl, the petitioner/first accused had committed penetrative sexual assault on the victim girl, that since tying of her hands got loosened, she escaped from that place and went to her home and informed about the incident to her mother and on the basis of the complaint lodged by the mother of the victim girl, FIR came to be registered in Crime No.425 of 2014 for the alleged offences under Sections 366(A), 376, 342, 34 IPC r/w 3, 4, 5(g) of POCSO Act. The respondent, after completing the investigation has laid the final report on 20.03.2015 and the case was taken on file in Spl.S.C.No.14 of 2015.

3. During trial, the prosecution has examined 21 witnesses as P.W.1 to P.W.21 and exhibited 26 documents as Ex.P.1 to Ex.P.26 and four material objects as M.O.1 to M.O.4. The accused have examined one witness as D.W.1 and adduced no documentary evidence.

4. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment, dated 29.11.2021, convicting the accused for the offence under Section 342 r/w Section 34 of IPC and sentenced him to undergo one year imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months; Section 366 r/w Section 34 IPC and sentenced him to undergo 10 years imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment and Section 5(g) and 6 of POCSO Act, sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- , in default, to undergo 1 year simple imprisonment and to pay a sum of Rs.50,000/- as compensation to the victim.

5. No doubt, the petitioner's earlier two applications for similar relief were ordered to be dismissed.

6. The petitioner and the second accused have jointly filed a petition in Crl.M.P.(MD)No.6940 of 2022 in Crl.A(MD)No.6 of 2022, seeking suspension of sentence and this Court, vide order dated 06.09.2022, while dismissing the application so far as the petitioner is concerned, has granted suspension of sentence to the second accused, taking note of the charges levelled against the



7. The learned counsel for the petitioner would submit that FIR came to be lodged with delay, that there was no proper explanation for the said delay and that the trial Court has not appreciated the contrary statements of the witnesses wherein all the witnesses have made a contrary statements against the petitioner and the entire judgment is based on the presumptions. He would further submit that though the incident was alleged to have occurred at 09.00 pm, on the information given by the victim girl her mother preferred a complaint before the respondent Police at about 12.00 am; that all the witnesses have given evidence contrary to each other and not in tune with the version of the prosecution and that the same would go to show that a false case was foisted against the petitioner. He would also submit that the trial Court has failed to notice material fact that there existed previous enmity between the petitioner and the family of the victim girl.

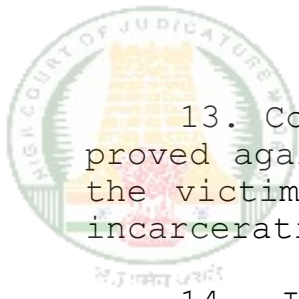
8. As rightly contended by the learned Government Advocate (Criminal Side), it is the specific case of the prosecution that the petitioner/first accused alone had committed aggravated penetrative sexual assault and the second accused was standing out side. No doubt, P.W.2 would say that initially the second accused was holding the legs of the victim girl and thereafter, he went out side and that the petitioner/first accused after disrobing her had committed penetrative sexual assault.

9. This Court has carefully considered the rival contentions put forth by either side and also perused the materials available on record.

10. As rightly contended by the learned Government Advocate (Criminal Side), the points/aspects canvassed by the learned counsel for the petitioner cannot be gone into at this stage and the same are matter for consideration in the main appeal.

11. The learned counsel appearing for the petitioners would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

12. Considering the nature of the charges levelled and also taking note of the incarceration period, the second accused was granted suspension of sentence. Merely because the second accused was granted suspension of sentence, it cannot be said that the petitioner/first accused is also entitled to get the relief. As already pointed out, the petitioner/first accused was charged with very serious offence of committing aggravated penetrative sexual assault and the trial Court has recorded a specific finding that the said charges stood proved.



13. Considering the nature and gravity of the offence, proved against the petitioner and also taking note of the fact that the victim girl was aged 14 years at that time and the period of incarceration, this Court is not inclined to suspend the sentence.

14. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-
06/04/2023

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/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DAS
TO

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

+1 CC to M/s.RAMSUNDARVIJAYRAJ.S, Advocate (SR-5533[I] dated
06/04/2023)

ORDER
IN
CRL MP (MD) No.652 of 2023
in
CRL A (MD) No. 6 OF 2022
Date :06/04/2023

PKP/CG/SAR-2/12.04.2023/ **4P/6C**