



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

Tuesday, the Seventh day of February Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.658 of 2023
IN
CRL A(MD) No.291 of 2022

SURESHKUMAR

... APPELLANT/PETITIONER

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT

... 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 against the petitioner in Spl.SC.No.51/2019 dt.25/3/2022 passed by the Learned Special Court for Exclusive Trial of Cases under POCSO Act cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the above appeal.

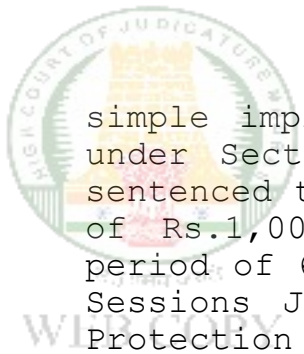
PRAYER IN CRL.A(MD).291/2022:

Pleased to call for the records in Spl.SC.No.51 of 2019 ated 25.03.2022 passed by the Learned Special Court for Exclusive Trial of Cases under POCSO Act Cases, Virudhunagar District at Srivilliputhur and to set aside the same.

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.KARUPPASAMY PANDIYAN G, Advocate for the petitioner and of Mr.B.NAMBISELVAN, 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 Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur, dated 25.03.2022, in S.C.No.51 of 2019 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 first accused in this case, has been convicted by the learned Sessions judge, for the offence under Section 363 of IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo



simple imprisonment for a period of 6 months and for the fine under Sections 8 r/w 7 of POCSO Act, 2012, he was convicted and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 6 months, in S.C.No.51 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur. Both the sentence were ordered to be run concurrently and the set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

The first accused alleged to have approached the family members of the victim girl, stating that he can arrange scholarship for the victim girl through the MLA Fund. On that score, he insisted them to give photograph of the child. On the pretext of taking photograph, the victim child was taken by the accused on 05.07.2019 at 03.00 p.m. by getting permission from the School, where she was studying. The victim was taken to Pudur Nenmeni Kanmaikarai and where she was sexually assaulted by the accused by touching her private parts, by removing her dresses. Thereafter, he had taken photographs of the child in nude manner through his mobile phone. She was also abused by the accused in filthy language. Later he took the child in his two wheeler and dropped near the School and went away. On the basis of the complaint lodged by the mother of the victim girl, FIR came to be registered in Crime No.15 of 2019 against the petitioner and one Kala. During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 16 documents as Ex.P1 to Ex.P16 and marked material objects as M.O.1 and M.O.2, whereas the accused have adduced neither oral nor documentary evidence.

4.At the conclusion of the trial, the trial Court came to the finding that the charge that was framed against the accused person was proved beyond all reasonable doubts. On that basis, the accused was found guilty and convicted and sentenced above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, earlier the petitioner has filed a petition seeking suspension of sentence and that was dismissed by this Court. Now this is the second application filed by the petitioner.

5.Now seeking suspension of sentence this petition has been filed by the petitioner stating that the earlier complaint has been suppressed by the prosecution. Originally photograph was also acquired or obtained by the petitioner, as it has been mentioned by the trial Court in its judgment.

6.Per contra, the learned Additional Public Prosecutor would submit that an innocent girl has been kidnapped under the false pretext and taken to a remote place and subjected to sexual assault. The earlier application filed by the petitioner was dismissed on 22.09.2020. The very same ground has been raised in the present



petition also. But this Court was not convinced with the evidence made and after a detailed discussion it came to be dismissed.

7. In the earlier application, it was submitted that the victim girl was travelling along with the accused for about 5 to 6 kilometers. At that time, she did not make any objection or noise. With regard to the suppression of the earlier complaint, he would rely upon the judgment of this Court in the case of **Karuppaiah Vs. State** reported in **2016 SCC Online Mad 7898**. But whether there was earlier complaint and there was suppression, is matter for consideration in the appeal. The manner, in which the above said offence said to have been committed itself is sufficient enough for refusing the request. The offence of such nature cannot be taken lightly. No plausible explanation has been offered by the accused for the aforesaid indecent of sexual assault. I find absolutely no change of circumstances. The contention that has been raised by this time cannot be taken into account. Repeated filing of petitions seeking suspension is not appreciated. This petition deserves to be dismissed. Accordingly, **dismissed**.

8. Since the entire records have been received from the concerned trial Court, the Registry is directed to make ready the typed set of papers and post the case for hearing on **13.02.2023**.

sd/-

07/02/2023

/ TRUE COPY /

14/02/2023

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

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TO

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

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.658 of 2023
IN CRL A(MD) No.291 of 2022
Date : 07/02/2023