



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

Thursday, the Second day of February Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.990 of 2023
IN
CRL A(MD) No.67 of 2023

LOGANATHAN

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SIVAKASI,
VIRUDHUNAGAR DISTRICT.
CRIME NO. 02/2019

... 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. 34 of 2019 dated 14.11.2022 and enlarge the petitioner / Sole Accused on bail, till the disposal of the Criminal Appeal.

PRAYER IN CRL A(MD) No.67 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, Virudhunagar District at Srivilliputhur in Special Sessions Case No.34 of 2019 dated 14.11.2022 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 Respondent, 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.34 of 2019, dated 14/11/2022 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 is that on 18/05/2019 at about 01.00 pm, the victim girl along with her friend one Karpagam was playing near the line house. After playing her friends left her, she alone was standing near the third house. At that time, the accused came there, kidnapped to the third house, where she was sexually assaulted by the accused.

3.On the basis of the above said occurrence, the case was registered. After completing the formalities of investigation, final report was filed for the offences punishable under section 366, 506 (i) IPC and section 5(k) r/w 6 of POCSO Act and it was taken on file in SSC No.34 of 2019 by the trial court.

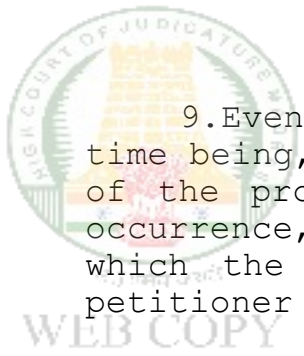
4.During trial process, on the side of the prosecution, 12 witnesses were examined and 18 documents marked, apart from that, 4 materials objects marked. On the side of the accused, neither oral evidence nor documentary has been adduced.

5.At the conclusion of the trial, the trial court found the petitioner guilty and sentenced him to undergo 6 months rigorous imprisonment and imposed a fine of Rs.5,000/- with default clause for the offence under section 506(i) IPC; and to undergo 10 years R/I and imposed a fine of Rs.10,000/- with default clause for the offence under section 5(k) r/w 6 of POCSO Act, 2012. Challenging the above said conviction and sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed seeking suspension of sentence.

6.Heard both sides.

7.The learned counsel appearing for the petitioner would submit that there is a delay of six days in making the complaint before the police station and the earlier complaint was suppressed; The delay has not been properly explained and the victim has been tutored by PW1 namely and the medical evidence did not support the case of the prosecution; and no semen was found in the dress materials and the arrest particulars have also doubtful, since it has been stated that when PW1 went to the police station for lodging the complaint, the accused was present in the police station; and a motive has also been suggested by the defence that on 18/05/2019, cycle belongs to the accused was broken by the victim's brother; To wreck vengeance only, the above said complaint has been given.

8.Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 7 or 8 years at the time of the alleged occurrence and she was taken by this petitioner to his house and committed the above said sexual assault.



9. Even if we ignore the evidence of PW1 and the victim at the time being, the independent witness is available supporting the case of the prosecution in the form PW3; She has narrated the entire occurrence, which does not suffer from any discrepancy. The manner, in which the above said offence has been committed disentitles the petitioner from claiming the benefit of suspension of sentence.

10. Even though, the learned counsel appearing for the petitioner would rely upon several judgments and filed in the form of additional typed set of papers, I am not going into those aspects. All these things can be taken into consideration at the time of final hearing in the main appeal.

11. As mentioned earlier, the manner, in which the above said offence said to have been committed is sufficient for denying the benefit of suspension of sentence to the petitioner.

12. In the result, this criminal miscellaneous petition is **dismissed**.

sd/-

02/02/2023

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

ORDER IN

CRL MP(MD) No.990 of 2023
IN
CRL A(MD) No.67 of 2023
Date : 02/02/2023

SA/VR/SAR.4/09.02.2023/3P/5C

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