



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

Monday, the Thirteenth day of February Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.2014 of 2023
IN
CRL A(MD) No.649 of 2022

MARISELVAM

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.1155/2017.

... 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.17 of 2018 dated 12.07.2022 and enlarge the petitioner / Sole Accused on bail till the disposal of the Criminal Appeal.

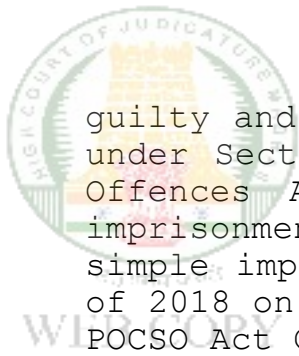
Prayer in CRL A(MD).649/2022 :

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.17 of 2018 dated 12.07.2022 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 by the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputtur, dated 17.07.2022, in Special S.C.No.17 of 2018 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 sole accused in this case, has been found



guilty and convicted by the learned Sessions judge, for the offence under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of one year, in Special S.C.No.17 of 2018 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar at Srivilliputtur.

3.The case of the prosecution in brief:

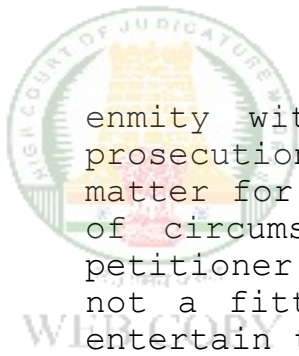
The victim is aged about 5 years. The accused person is also a resident of the same village. He used to take the victim boy frequently to his house and sexually assaulted him. That was repeated for several times and finally on 29.11.2017 at about 3.15 p.m. the above said sexual assault was again committed. On the basis of the above said occurrence, complaint was given and after completing the formalities of the investigation final report was filed before the concerned Special Court. On the side of the prosecution 11 witnesses have been examined, 10 documents marked. On the side of the accused none was examined and no documents were marked. Ex.C.1 was also marked on the side of the Court.

4.At the conclusion of the trial, the trial Court came to the conclusion that the accused was found guilty for the offence punishable under Section 5(m) r/w 6 of POCSO Act convicted and sentenced as above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, a petition has been filed seeking suspension of sentence and the same was dismissed.

5.This is the second petition filed by the petitioner on the ground that even as per the allegations made in the FIR and as well as in the trial process, there was no penetrative sexual assault committed by the petitioner. Similarly, the date and time of the occurrence is also not specifically stated. On the previous day of the alleged occurrence assault was made by the brother of the victim upon the father of the petitioner. He has also submitted that the earlier complaint was suppressed by the prosecution, which was spoken by PW1.

6.Per contra, the learned Additional Public Prosecutor would submit that the earlier application was dismissed only on 31.10.2022. There is no change of circumstances and the victim boy was admitted in the hospital and taking treatment as inpatient for more than 3 days.

7.Considering the gravity of the offence and also the manner in which the above said offence was committed, the earlier petition was dismissed. Now, new ground has been made by the petitioner, in this petition. However, on going through the records, I am of the considered view that all the grounds raised by the petitioner have been rejected by the trial Court. Whether there was any previous



enmity with regard to the assault that has been made. The prosecution side witnesses upon the father of the petitioner is a matter for consideration in the appeal. Absolutely, I find no change of circumstances. All the points that have been raised by the petitioner can be raised and decided at the time of appeal. This is not a fittest case to suspend the sentence. I find no reason to entertain the second petition.

8. This criminal miscellaneous petition deserves to be dismissed. Accordingly, **dismissed**.

sd/-

13/02/2023

/ TRUE COPY /

/02/2023

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

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TO

1 THE SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE INSPECTOR OF POLICE
SIVAKASI EAST POLICE STATION, VIRUDHUNAGAR DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.2014 of 2023

IN

CRL A(MD) No.649 of 2022

Date :13/02/2023

RS/SSS/SAR.4(16.02.2023) 3P-5C