



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

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

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.2785 of 2023
in
CRL A(MD) No.130 of 2023

S.KARTHIRVELSAMY

... PETITIONER/APELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
ARUPPUKOTTAI ALL WOMEN POLICE STATION,
ARUPPUKOTTAI.
(CRIME NO.15/2020).

... RESPONDENT/COMPLAINANT

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 passed in Spl.S.C.No.72/2020 on the file of the Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur, dt.2/11/2022 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

Prayer in CRL A(MD).130/2023 :

To call for the records relating to the conviction passed in Spl.S.C.No.72 of 2020 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, dated 02.11.2022 and set aside the same.

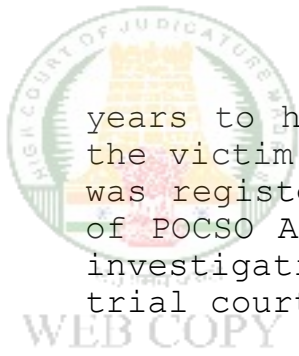
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.VAKEESWARAN C, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondents the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special SC No.72 of 2020, dated 02/11/2022 by the Special Court for POCSO Act cases, Virudhunagar at Srivilliputhur and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The facts in brief:-

On 24/09/2020 and 25/09/2020, when the victim was playing along with her friends, the accused took up the victim girl, who is aged 4

<https://www.mhc.tn.gov.in/judis>



years to his house and licked her private part and also touched the victim girl. On the basis of the above said occurrence, the case was registered for the offences punishable under section 5(m) r/w 6 of POCSO Act and 506(i)IPC. After completing the formalities of the investigation, final report has been filed before the concerned trial court in Special SC No.72 of 2020.

3.Before the trial court, on the side of the prosecution, 9 witnesses were examined and 13 documents marked. On the side of the accused, no oral and documentary evidence was adduced.

4.At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced him to undergo 20 years Rigorous Imprisonment and imposed a fine of Rs.10,000/- with default clause for the offence under section 5(m) r/w 6 of POSCO Act, 2012; and to undergo 1 year Simple Imprisonment for the offence under section 506(i) IPC.

5.Challenging the above said conviction and sentence, Criminal Appeal has been preferred. Pending appeal, this miscellaneous petition has been filed.

6.Heard both sides.

7.The learned counsel appearing for the petitioner would submit that there is a delay of two or more days in preferring the complaint, since PW1 stated that two days prior to the filing of the FIR, the alleged occurrence took place on 04/10/2020 and 08/10/2020; Even though, it has been stated, it was suppressed in the complaint and the victim was tutored by the parents and PW1 was not cross examined on the side of the prosecution; and PW9 during the course of cross examination has stated about the motive and illegal intimacy, but the friend of the victim namely Gopika was not examined. According to him, in view of the discrepancy of the prosecution evidence, the petitioner is entitled for suspension of sentence.

8.The learned Additional Public Prosecutor would submit that taking advantage of the relationship, the above said misbehaviour has been made and PW2-victim has given a clear picture by indicating the private part, in which the petitioner misbehaved and other events.

9.Absolutely, nothing is brought on record to disbelieve her evidence. So, I find no reason to suspend the sentence. The manner in which, the above said occurrence said to have committed is sufficient for dismissing the suspension.



CRL MP(MD)



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

sd/-
02/03/2023

/ TRUE COPY /

/03/2023

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

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TO

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

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE, ARUPPUKOTTAI ALL WOMEN POLICE STATION,
ARUPPUKOTTAI.

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

ORDER
IN
CRL MP (MD) No.2785 of 2023
in
CRL A (MD) No.130 of 2023
Date :02/03/2023

RS/BUC/SAR-1 (13.03.2023) 3P 5C