



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

Thursday, the Twenty Third day of February Two Thousand and Twenty
Three
PRESENT

WEB COPY

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.2445 of 2023
IN
CRL A(MD) No.113 of 2023

1 ATHITHYAN

... PETITIONER/APPELLANT

Vs

1 THE STATE REP.BY
THE INSPECTOR OF POLICE
PAPANASAM ALL WOMEN POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO. 14 OF 2021

... 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 passed in Spl S.C No. 61 of 2022 dated 28.01.2023 on the file of the Learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Thanjavur pending disposal of the above said Criminal Appeal

Prayer in CRL A(MD). 113/ 2023 :

To call for the records pertaining to the order made in Spl.S.C.No.61 of 2022 dated 28/01/2023 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO ACT, Thanjavur and set aside the same by allowing above appeal and pass such other orders.

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.KARUNAKARAN.K.M., Advocate for the petitioner and of learned Additional Public Prosecutor for 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.61 of 2012, dated 28/01/2023 by the Special Court for exclusively Trial of Cases under POCSO Act Cases, Thanjavur and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution in brief:-

The victim girl was aged about 16 years at the time of the occurrence and was studying 10th Standard. On 02/07/2021 at about 10.30 pm, the victim girl was returning to her house after attending



the natural call, at that time, the accused was standing near the bathroom, caught hold of her and dropped her inside the room and sexually assaulted her by touching her private parts. Based upon which, a case in Crime No.14 of 2021 was filed. After completing the formalities of investigation, final report was filed for the offences punishable under sections 342 IPC and sections 7 r/w 8 of POCSO Act and it was taken on file in SSC No.61 of 2022 by the trial court.

3. During trial process, on the side of the prosecution, 12 witnesses were examined and 11 documents marked. On the side of the accused, neither oral evidence nor documentary has been adduced.

4. At the conclusion of the trial, the trial court found the petitioner guilty and sentenced him to undergo six month of R/I and imposed a fine of Rs.500/- with default clause for the offence under section 342 IPC; undergo 3 years R/I and imposed a fine of Rs.5,000/- with default clause for the offence under section 7 r/w 8 of POCSO Act.

5. 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 Ex.P1 complaint contradicts the evidence on record and the offence is also differently stated in the complaint and another at the time of giving statement to the Doctor; According to him, there was a motive between the father of the victim and the accused, which was admitted during the course of trial. On the basis of the above said previous motive, he seeks suspension of sentence.

8. Per contra, the learned Additional Public Prosecutor would submit that the victim girl has given a clear statement with regard to the occurrence, the manner in which the above said offence is said to have been taken before the trial court.

9. Now let us straightaway go to the evidence of the victim girl, who is examined as PW1.

10. It is seen from the records that on the date of her examination, she was major. According to her, as stated by the prosecution, on 02/07/2021 at about 10.30 pm, the accused misbehaved with her and she was sexually assaulted and was crying, the parents of the victim girl came to the place of occurrence immediately. But the accused escaped from the place of the occurrence and the accused stated to be the Pangali of PW2, who is the father of the victim girl. Immediately, he returned to the police station and at about 11.30 pm, the police came to the spot and the accused was taken to



the police station and it was admitted by him that some three months prior to the occurrence, both families were cordial and later, when started constructing a house, trouble arose between them and due to storage of water. This has been pointed by the petitioner that this is the motive for foisting this case. But I am unable to agree with this line of argument for the simple reason that a simple motive would not have arisen to implicate this petitioner in the sexual assault on the victim girl.

11. Whether the above said circumstances are enough for recording a conviction is a matter for consideration in the main appeal.

12. Considering the seriousness of the offence and more over, the judgment of the recent origin, this court is not inclined to enlarge the petitioner by granting suspension of sentence.

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

sd/-
23/02/2023

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/03/2023

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

TO

- 1 THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER POCSO ACT, THANJAVUR
- 2 THE INSPECTOR OF POLICE
PAPANASAM ALL WOMEN POLICE STATION,
THANJAVUR DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.2445 of 2023
IN
CRL A (MD) No.113 of 2023
Date : 23/02/2023