



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

Friday, the Twelfth day of May Two Thousand and Twenty Three

PRESENT

The Hon'ble Mr. Justice K.MURALI SHANKAR

CRL MP(MD) No.3910 of 2023
IN
CRL A(MD) No.178 of 2023

RAJESH

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
(IN CRIME NO.15/2013)

... 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 imposed against the appellant in Spl.C.No.2 of 2019 on the file of the Hon'ble Sessions Judge, POCSO Special Court, Tirunelveli dt.24.08.2022 and release the appellant on bail till the disposal of the appeal.

PRAYER IN CRL.A(MD).178/2023:

Pleased to call for the entire records connected to the judgment in Spl.C.No.2 of 2019 on the file of the Hon'ble Sessions Judge, POCSO Special Court, Tirunelveli dated 24.08.2022 and set aside the conviction and sentence imposed against the appellant.

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.ALAGUMANI.R, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(crl.side) on behalf of the Respondents the court made the following order:-

Reserved on : 28.04.2023

Delivered on : 12.05.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.C.No.2 of 2019, dated 24.08.2022, on the file of the learned Sessions Judge, POCSO Special Court, Tirunelveli, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 03.08.2013 at about 12.30 hours, since the victim girl's cousin was found missing, the victim girl came out of her house in search of her cousin and at that time, the petitioner/accused dragged the hands of the victim child and closed her mouth with cloth and dragged her into his house; that thereafter, the petitioner/accused wrongfully confined the victim child into his aunt's house, which was situated below the house of the the victim girl, till 20.00 hours; that the petitioner/accused removed her dress and committed the offence of penetrative sexual assault on the victim child; that since the victim child had not turned up to home, P.W.1/mother of the victim girl started searching and found her in the house of the accused aunt's house and that the victim's mother after coming to know about the incident has preferred a complaint and on that basis, FIR came to be registered in Crime No.15 of 2023 under Sections 376 of IPC and Section 4 of POCSO Act. The respondent, after completing the investigation, has laid the final report and the case was taken on file in Spl.C.No.2 of 2019 on the file of the Sessions Judge, Special Court, Tirunelveli.

3. During the trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and exhibited 17 documents as Ex.P.1 to Ex.P.17. The accused has adduced neither oral nor documentary evidence.

4. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 24.08.2022 convicting the petitioner/accused for the offence under Section 342 IPC and sentenced him to undergo six months Rigorous Imprisonment and for the offence under Section 3(a) r/w 4(2) of POCSO Act sentenced him to undergo 20 years rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one year rigorous imprisonment. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that the witnesses P.W.1, P.W.3, P.W.4 and P.W.5 had turned hostile; that P.W.2 is the second wife of the victim's father and also her mother's sister', that P.W.3 is the father of victim girl; P.W.4 is the relative and P.W.5 is the neighbor of the victim girl; that according to the prosecution, the accused house was situated downstairs, but P.W.2/victim girl would depose that the accused relative house was situated in the downstairs of her her house and as such, the place of alleged occurrence is highly doubtful; that the case of the prosecution was not at all supported by the medical evidence; that there are many material contradictions in the evidence of P.W.2 and the case of the prosecution and that the prosecution has failed to offered any reason or explanation for the

<https://www.hcj.gov.in/judis> registering the case.



6. The learned Government Advocate (Criminal Side) for the State would submit that P.W.9 Doctor would say that the hymen of the victim child was not intact as it lies in torn condition and that the trial Court, by considering the evidence available on record, has rightly convicted the petitioner/accused.

7. Considering the above facts and circumstances of the case and the nature and gravity of the offence allegedly proved against the petitioner and also taking note of the fact that the impugned judgment was passed only on 24.08.2022 and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

8. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-

12/05/2023

/ TRUE COPY /

/05/2023

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

DAS

TO

- 1 THE SESSIONS JUDGE,
POCSO SPECIAL COURT, TIRUNELVELI.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP(MD) No.3910 of 2023
IN

CRL A(MD) No.178 of 2023

Date :12/05/2023

SA/MMS/SAR.4/17.05.2023/3P/5C