



WEB COPY

CRL MP(MD)



23

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

Wednesday, the Eighth day of March Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.3779 of 2023

in

CRL A(MD) No.494 of 2022

PANDIYAN

... PETITIONER/PETITIONER
/APPELLANT/SOLE ACCUSED

Vs

State Rep.by
THE INSPECTOR OF POLICE
PANDHANALLUR POLICE STATION,
THANJAVUR DISTRICT.
(IN CRIME NO.491/2021).

... RESPONDENT/RESPONDENT
/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 and conviction imposed on the petitioner by Learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur in Spl.SC.No.6/2021 by judgement dt.29/7/2022 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD) No.494 of 2022 :

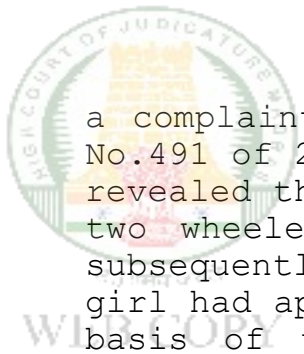
To call for the records and set aside the judgment dated 29.07.2022 made in SPECIAL S.C No.6 of 2021 on the file of the Learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and allow the above criminal appeal.

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.ANANDAKUMAR N, Advocate for the petitioner and of MR.S.S.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence passed in Spl.S.C.No.6 of 2021, dated 29.07.2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that on 04.06.2021 in the early morning at about 03.00 hours, the victim girl, who was aged about 15 years and was studying 10th standard was found missing; that thereafter, the defacto complainant P.W.1 and her husband searched their daughter in their relative houses, but could not trace out their daughter; that the defacto complainant suspecting the petitioner as he had been talking with her daughter lodged

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a complaint and on that basis, FIR came to be registered No.491 of 2021 as girl missing on 04.06.2021; that the investigation revealed that the appellant/accused had kidnapped the victim girl by two wheeler and hence, the case was altered into 366 IPC; that subsequently, on 08.06.2021, the appellant/accused along with victim girl had appeared before the Jeyamkondam Police Station, that on the basis of the statement given by the victim girl, the case was altered into 366 IPC and under Sections 6, 5(1) of POCSO Act and that after completing the investigation, final report came to be filed on 05.07.2021 and the same was taken on file in Spl.S.C.No.6 of 2021.

3.During trial, the prosecution has examined 19 witnesses as P.W.1 to P.W.19; exhibited 15 documents as Ex.P.1 to Ex.P.15 and marked one material object as M.O.1. The accused has adduced neither oral nor any documentary evidence.

4.The learned Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the judgment dated 29.07.2022, convicting the petitioner/accused under Section 361 r/w 363 IPC and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, rigorous imprisonment for a period of one year and acquitted the accused for the offence under Sections 11(iv) r/w 12, 5(1) r/w 6, 4(2) of POCSO Act. Aggrieved by the conviction judgment, the accused has preferred the present appeal.

5.The petitioner's earlier application for similar relief in Crl.M.P. (MD)No.9440 of 2022 in Crl.A(MD)No.494 of 2022, after enquiry, was ordered to be dismissed vide order dated 14.09.2022.

6.The learned Government Advocate (Criminal Side) would submit that the victim girl was aged about 15 years at the time of alleged occurrence, that when the victim girl was alone in her house, the accused by alleging that he was loving her, had enticed her and had sexual intercourse with her forcibly and that subsequently on 04.06.2021, he had forcibly taken the victim girl in a motor cycle and thereby kidnapped the victim girl and had sexual intercourse with her many time by promising that he would marry her.

7.The learned counsel for the petitioner/appellant would contend that P.W.4 and P.W.5 in their evidence would say that they were not sure as to whether it was indeed the victim girl along with the accused on the two-wheeler as it was very dark at that time and that the trial Court has rightly acquitted the accused for the offence under POCSO Act.

8.The learned Additional Public Prosecutor would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of



9.This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

10.The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison from the date of judgment i.e., on 29.07.2022. Hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

11.Accordingly, the relief of suspension of sentence is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court on all working days at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-

08/03/2023

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09/03/2023

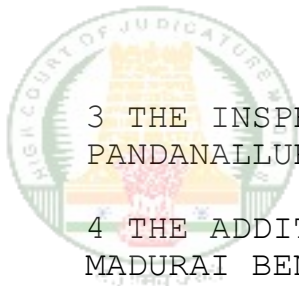
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

das

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
THANJAVUR.

2 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.



CRL MP(MD)



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3 THE INSPECTOR OF POLICE
PANDANALLUR POLICE STATION, THANJAVUR DISTRICT.

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

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ORDER
IN
CRL MP(MD) No.3779 of 2023
in
CRL A(MD) No.494 of 2022
Date :08/03/2023

RS/MMS/SAR-(09.03.2023) 4P 5C