



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

Monday, the Sixth day of March Two Thousand and Twenty Three

PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.3797 of 2023
in
CRL A(MD)No.172 of 2023

1 ALAGARSAMY

... PETITIONER/APPELLANT

Vs

1 THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SIVAKASI,
VIRUDHUNAGAR DISTRICT.
CRIME NO. 04/2022

... 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 Special Court (Protection of Children from Sexual Offences Act cases), Virudhunagar at Srivilliputtur in Special S.C No. 46/2022 on 16.02.2023 pending disposal of the Criminal Appeal

PRAYER in CRL A(MD)NO.172 OF 2023:

To call for the records and set aside the conviction and sentence imposed by the Special Court(Protection of Children from Sexual Offences Act Cases),Virudhunagar at Srivilliputtur in Special S.C.No.46/2022 on 16/02/2023

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.JOTHI BASU M, Advocate for the petitioner and of S.S. MADHAVAN, GOVERNMENT ADVOCATE (CRIMINAL SIDE) on behalf of the Respondent While admitting the Criminal Appeal the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.46 of 2022, dated 16.02.2023, on the file of the learned Sessions Judge, Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar at Srivilliputtur, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 14.02.2022 at about 08.30 a.m., the petitioner pull the left hand of the victim girl, who is a minor, with an intention to commit sexual assault and on that basis, FIR came to be registered in Crime No.4 of 2022.



3. The respondent police, after completing the investigation, has filed the final report and after committal, the case was taken on file in Spl.S.C.No.46 of 2022 and the same was pending on the file of the learned Sessions Judge, Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar at Srivilliputtur.

4. During the trial, the prosecution has examined 5 witnesses as P.W.1 to P.W.5 and exhibited 7 documents as Ex.P.1 to Ex.P.7. The defence has adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 16.02.2023 convicting the petitioner/accused for the offence under Section 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment. The Trial Court has suspended the sentence imposed on the petitioner till 15.03.2023. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

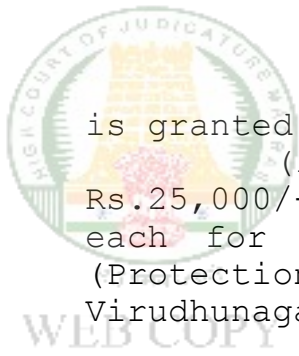
6. The learned counsel appearing for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that the petitioner has already paid fine amount.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

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

9. The learned counsel appearing 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 as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, the relief of suspension of sentence and bail



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 Special Court (Protection of Children from Sexual Offences Act cases), Virudhunagar at Srivilliputtur;

(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 once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal 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/-

06/03/2023

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/03/2023

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

TO

1 The Judge,
Special Court (Protection of Children
from Sexual Offences Act cases),
Virudhunagar at Srivilliputtur

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SIVAKASI,
VIRUDHUNAGAR DISTRICT.

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

+1. C.C. to M/S.JOTHI BASU M Advocate SR.No.3491

ORDER

IN

CRL MP(MD) No.3797 of 2023
in

CRL A(MD)No.172 of 2023

Date :06/03/2023