



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

Thursday, the Sixth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4440 of 2023
in
CRL A(MD) No.113 of 2023

ATHITHYAN

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
PAPANASAM ALL WOMEN POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.14/2021).

... 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 sentences passed in Spl.SC.No.61/2022 dt.28/1/2023 on the file of Learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur pending disposal of the above Criminal Appeal.

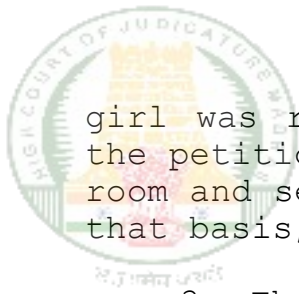
PRAYER IN CRL A(MD).113/2023 :

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 learned Sessions Judge, Principal Special court for Exclusive Trial of Cases under POCSO Act, Thanjavur and set aside the same by allowing above 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.KARUNAKARAN K M, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Principal Special court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.61 of 2022, dated 28.01.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the victim girl was aged about 16 years at the time of the occurrence and was studying 10th Standard and that on 02.07.2021 at about 10.30 p.m., when the victim



girl was returning to her house after attending the natural, the petitioner/accused caught hold of her and dropped her inside the room and sexually assaulted her by touching her private parts and on that basis, FIR came to be registered in Crime No.14 of 2021.

3. The respondent police, after completing the investigation, has filed the final report for the offences under Section 342 IPC and Sections 7 r/w 8 of POCSO Act and the case was taken on file in Spl.S.C.No.61 of 2022 and the same was pending on the file of the learned Sessions Judge, Principal Special court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

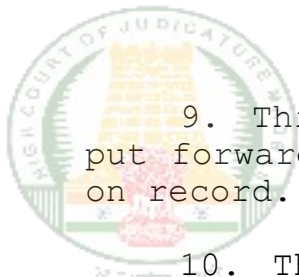
4. During trial, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The accused has adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 28.01.2023 finding the petitioner guilty for the offences under Section 342 IPC and Sections 7 r/w 8 of POCSO Act and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 1 month Rigorous Imprisonment for the offence under Section 342 IPC and to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months Rigorous Imprisonment for the offences under Sections 7 r/w 8 of POCSO Act and that the above sentences were ordered to be run concurrently. The Trial Court has already suspended the sentence imposed on the petitioner till 28.02.2023 in Crl.M.P.No.53 of 2023 and subsequently, in Crl.M.P.No.230 of 2023 suspension of sentence was ordered to be extended till 28.03.2023. Challenging the above said conviction and sentence, the accused has preferred the present Criminal Appeal.

6. No doubt, the petitioner's earlier application for suspension of sentence in Crl.M.P.(MD)No.2445 of 2023 was ordered to be dismissed by this Court vide order dated 23.02.2023.

7. 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.

8. 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.



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 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.

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, Principal 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 daily 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/-

06/04/2023

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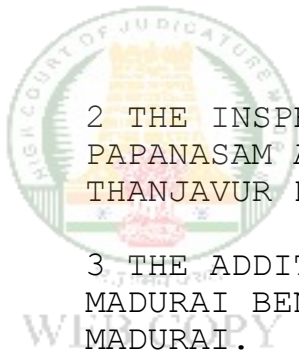
/04/2023

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

CSM

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.

+1 CC to M/s.K.M.KARUNAKARAN, Advocate (SR-5513[I] dated 06/04/2023)

ORDER
IN
CRL MP(MD) No.4440 of 2023
in
CRL A(MD) No.113 of 2023
Date :06/04/2023

RS/CG/SAR-3(10.04.2023) 4P 5C