



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

Monday, the Twenty Fourth day of April Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4304 of 2023

IN

CRL A(MD)No. 339 of 2022

PANDIARAJAN

(NOW CONFINED AT

CENTRAL PRISON, MADURAI)

... PETITIONER/PETITIONER/APPELLANT

Vs

THE STATE REP BY,

THE INSPECTOR OF POLICE

ALL WOMEN POLICE STATION,

VIRUDHUNAGAR DISTRICT

(CRIME NO. 21 OF 2016)

... RESPONDENT/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 in Spl S.C No. 1 of 2017 dated 07.03.2022 by the learned Special Court for Exclusive trial of cases under Protection of Children from the Sexual Offences Act, 2012 Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the main Criminal Appeal.

Prayer in CRL A(MD)No.339 OF 2022:

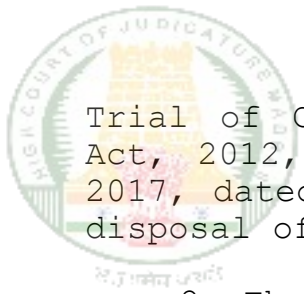
Pleased to call for the records and set aside the conviction and sentence passed in Spl.S.C.No. 1 of 2017 dated 11.03.2022 by the Special Court for Exclusive Trial of Cases under Protection of Children From the Sexual Offences Act, 2012 Virudhunagar District at Srivilliputhur and allow this appeal.

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.MUTHUKAMATCHI V, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondents the court made the following order:-

Reserved on : 19.04.2023

Delivered on : 24.04.2023

The Criminal Miscellaneous Petition has been filed to
<https://www.scribd.com/document/711111111> the sentence imposed by the Special Court for Exclusive

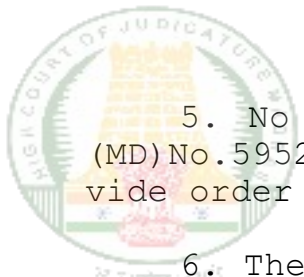


Trial of Cases under Protection of Children from Sexual Abuse Act, 2012, Virudhunagar District at Srivilliputhur in S.C.No.1 of 2017, dated 11.03.2022, and enlarge the petitioner on bail, pending disposal of the appeal.

2. The case of the prosecution is that the accused was residing opposite to the house of the defacto complainant; that the victim girl was aged about 15 years and was studying 10th standard at that time, that on 05.09.2016 at about 12 noon when the victim girl was playing in front of the house of the accused, the accused had seen her and called her to play into his house; that when the child went at nearby the house of the accused, he pulled her into his house and locked his house; that the accused asked the victim girl to drink Bovonto mixed with the sleeping tablets, but she refused to take, that the accused however coercively poured such Bovonto into her mouth and as such, she has become drowsy and tired; that the accused thereafter, had removed all her dresses and made her in a nude manner and committed aggravated penetrative sexual assault against her so many times from 01.00 pm to 03.30 pm; that the accused during the said assault, caused bite injuries upon various parts of the victim's body and that the accused after coming to know that the victim's relatives were on search, he ran away from the occurrence place. On the basis of the complaint lodged, FIR came to be registered in Crime No.21 of 2016. After completing the investigation, the respondent Police has laid the final report against the petitioner/accused for the alleged offences under Sections 366(A), 341 IPC and Sections 5(i), 5(j)(i), 5(u), 6, 11(4), 12 and 5(1) of POCSO Act and the case was taken on file in Spl.S.C.No.1 of 2017 and the same was pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar at Srivilliputhur.

3. During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17 and exhibited 16 documents as Ex.P.1 to Ex.P.16 and marked 9 material objects as M.O.1 and M.O.9. 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 judgment, dated 11.03.2022, convicting the accused for the offence under Section 366 IPC and sentenced him to undergo 10 years imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment; and sentenced him to undergo 3 years imprisonment and pay a fine of Rs.1,000/- for the offence under Section 12 of POCSO Act and sentenced him to undergo ten years imprisonment and pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment for the offence under Section 6 of POCSO Act. The accused, aggrieved by the judgment of conviction and sentence, has preferred criminal appeal along with the above Miscellaneous Petition seeking suspension of sentence.



5. No doubt, the petitioner's earlier application in (MD)No.5952 of 2022 for similar prayer was ordered to be dismissed, vide order dated 20.10.2022.

6. The learned counsel for the petitioner would submit that the story of the prosecution was never corroborated by the evidence of P.W.2, P.W.3 and P.W.6; that P.W.2 would say that the accused had absconded ; and P.W.6 and P.W.3 would say that there was some noise from the house of the accused and on hearing the same, P.W.2, P.W.3 and P.W.6 had knocked the door and the accused opened the door and seeing the victim girl in nude and that thereafter, they had taken the victim girl after making her to wear her cloths; that the above material contradictions between the evidence of P.W.2 to P.W.6 would establish that the petitioner/accused never present in the scene of occurrence; that the Medical Officer would clearly deposed that there was no injury in the private part as well as in the breast of the victim girl; that the prosecution has not taken any steps to prove that the accused had mixed sleeping tablets in the cool drink and gave it to the victim girl.

7. The learned Additional Public Prosecutor appearing for the State would submit that the trial Court, after considering the evidence of all the witnesses, has rightly come to the conclusion that the charges levelled against the accused were proved. He would further submit that the victim girl was secured from the petitioner's house; that P.W.2 would depose categorically that after hearing the noise of the victim from the accused house, she went to the accused house and found that the bangles of the victim girl were broken and the victim girl was lying in the mat and that P.W.16 Medical Officer has stated that there was no injury found in her private part, but he would say that the victim was subjected to sexual intercourse. The learned counsel for the petitioner would submit that there existed love affairs between the petitioner/accused and the victim girl and there was no sexual assault. As rightly contended by the learned Additional Public Prosecutor, there is absolutely no evidence to prove the same.

8. Moreover, as rightly contended by the learned Additional Public Prosecutor, the aspects/points now canvassed are matter for consideration in the appeal.

9. Considering the seriousness and gravity of the offence allegedly proved and the quantum of punishment awarded and also taking note of the incarceration period, this Court is not inclined to suspend the sentence at this point of time.



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

sd/-
24/04/2023

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/05/2023

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

DAS

TO

- 1 THE SPECIAL JUDGE,
FOR EXCLUSIVE TRIAL OF CASES UNDER
PROTECTION OF CHILDREN FROM THE SEXUAL
OFFENCES ACT, 2012, VIRUDHUNAGAR DISTRICT AT
SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.MUTHUKAMATCHI V Advocate SR.No.6603(I)

ORDER
IN
CRL MP(MD) No.4304 of 2023
IN
CRL A(MD)No. 339 of 2022
Date :24/04/2023

PKP/MMS/SAR-3/17.05.2023/ **4P/6C**