



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

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

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.4606 of 2023

in

Crl.A.(MD)No.163 of 2023

ASIR SUDHAHARRAJ

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THALLAKULAM,
MADURAI CITY,
MADURAI.

CR. NO. 10 OF 2020

... 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 on the petitioner / Appellant in Spl S.C No. 18/2020 dated 30.01.2023 on the file of the court of Sessions Judge, Principal Special court for Exclusive Trial of cases under POCSO Act, Madurai and enlarge him on bail pending disposal of the instant Criminal appeal.

PRAYER IN Crl.A.(MD)No.163 of 2023:-

To call for the records pertaining to Special Sessions Case No.18/2020 dated 30.01.2023 on the file of the Court of Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai.

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.SAMIDURAI K, Advocate for the petitioner and of M/S.R.SIVA KUMAR, Government Advocate(Crl.Side) on behalf of the Respondent the court made the following order:-



Reserved on : 05.04.2023

Delivered on : 17.04.2023

This petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.18 of 2020, on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai, dated 30.01.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim boy aged about 14 years was studying in 10th standard in a School at Thallakulam; that the accused was working as Office Assistant in the said School; that the victim boy being the student leader used to get chalk-piece and other things from the office room; that one month prior to 03.03.2020 the victim boy went to the school office to get some things and at that time, the accused misbehaved with the boy and removed his pant with sexual intent and pressed the sexual organ with intention to suck the sexual organ of the boy; that on 02.03.2020, the accused had committed the same misbehaviour with the victim boy; that the accused had also threatened the victim boy not to inform the above incident to anyone and as a result of which, the victim boy unable to bear the above, consumed sleeping tablets at night on 02.03.2020 to commit suicide; that the victim boy on the next day did not get up and he was found in unconscious stage; that he was immediately taken to nearby hospital and after getting the information, complaint came to be lodged and on that basis, FIR came to be registered; that the respondent Police, after completing the investigation, has laid the final report against the accused for the offence under Section 9(f)(1) r/w 10 of Protection of Children from Sexual Offences Act, 2012 and Section 506(1) I.P.C.

3. During trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The defence has examined the accused as D.W.1 and exhibited two documents as Ex.D.1 to Ex.D.2 and that the proceedings for recording statement under Section 164 Cr.P.C has been marked as Ex.C.1

4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 30.01.2023, finding the accused guilty for the offences under Sections 9(f), 9(1) r/w 10 of POCSO Act and sentenced to undergo 5 years rigorous imprisonment for each offence and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year and convicted the accused for the offence under Section 506(1) I.P.C and sentenced him to undergo one year rigorous imprisonment and also to pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment. Aggrieved by the judgment of conviction and sentence, the accused has come forward with the present appeal.



5. The learned counsel for the petitioner would submit that the case of the prosecution is that the accused was arrested on 03.03.2020 at about 18.15 hours near Thallakulam Peumal Kovil bus stop, but, P.W.10/Headmistress of the school in her cross examination would say that when the farewell party of their Teacher Samuel Packiaraj was held in their school, Police came to the school and arrested the accused at about 11.30 a.m. itself; that the accused was arrested even before registration of F.I.R, but the same was suppressed and that the prosecution has suppressed the origin and genesis of the case, but, the trial Court has failed to consider the very suppression of complaint, which goes to the root of the case. He would further submit that the trial Court, only on the basis of the evidence of victim boy, has convicted the petitioner/accused and that there are several material contradictions in the evidence of prosecution witnesses.

6. As rightly contended by the learned Government Advocate (Criminal Side), it is not the case of the accused that the factum of arresting the petitioner/accused at 11.30 hours in the school was reported before the remanding Magistrate or during the bail proceedings.

7. The learned Government Advocate (Criminal Side) would submit that though the defence has taken a plea that there was motive in lodging the complaint, the trial Court has rightly dealt with issue and rejected the same.

8. As rightly contended by the learned Advocate (Criminal Side), the points/aspects now canvassed by the learned counsel for the petitioner are matter for consideration in the main appeal.

9. Considering nature and seriousness of the offence allegedly proved against the petitioner and also taking note of the fact that the impugned judgment was passed only on 30.01.2023 and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

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

sd/-
17/04/2023

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/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

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

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THALLAKULAM,
MADURAI CITY,
MADURAI.

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

+1 CC to M/s.SAMIDURAI K, Advocate (SR-6034[I] dated 18/04/2023)

ORDER

IN

CRL MP (MD) No.4606 of 2023

IN

CRL A (MD) No.163 of 2023

Date :17/04/2023

NA/VR/SAR-I/27.04.2023/4P/6C