



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Tuesday, the Twenty Eighth day of March Two Thousand and Twenty  
Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4632 of 2023  
in  
CRL A(MD)No. 516 of 2022

MURUGESAN

... PETITIONER/APPELLANT/SOLE ACCUSED

AT PRESENT CONFINED AT  
CENTRAL PRISON,MADURAI,  
AS CONVICT PRISONER

Vs

THE STATE REP BY,  
THE INSPECTOR OF POLICE  
SEITHUR POLICE STATION,  
VIRUDHUNAGAR,  
(CRIME NO.59/2014)

... 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 imposed on the petitioner by the Learned Special Court for exclusive trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur by its judgment in Spl SC No.22/2020 dt.04.12.2021 and enlarge him on bail pending disposal of the Criminal Appeal.

PRAYER IN CRL A(MD)NO.516 of 2022:

To call for the records of the impugned judgment made in SPL.S.C.No. 22 of 2020 on the file of the Learned Special Court for Exclusive trial of POCSO Act cases, Virudhunagar District at Srivilliputtur dated 04.12.2021 and set aside the same.

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.JEGADEESH PANDIAN M, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



|                      |                   |
|----------------------|-------------------|
| <b>RESERVED ON</b>   | <b>21.03.2023</b> |
| <b>PRONOUNCED ON</b> | <b>28.03.2023</b> |

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for exclusive trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur, in Spl.S.C.No.22 of 2020, dated 04.12.2021, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the victim girl and the petitioner/accused are neighbours, that the wife of the petitioner was living in her parental home as there existed matrimonial dispute between them, that the petitioner taking advantage of the immaturity of the victim girl, who was aged about 15 years, on 12.02.2014 at about 02.30 a.m., had kidnapped her and took her to a lodge by falsely representing that they are husband and wife and she was subjected to penetrative sexual assault therein, that she was taken to another place and where also she was subjected to sexual assault, that on the basis of the complaint given by the victim girl's father, FIR came to be registered as 'Girl Missing' and that after coming to know about the involvement of the petitioner and after securing the victim girl and the petitioner, the case was altered and after investigation, final report came to be filed.

3. During trial, the prosecution has examined 20 witnesses as P.W.1 to P.W.20 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The defence has adduced neither oral nor documentary evidence.

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 impugned judgment dated 04.12.2021 finding the petitioner guilty for the offences under Sections 366 and 417 IPC and Section 4 of POCSO Act, 2012 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 for the offence under Section 366 IPC, to undergo 1 year imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 417 IPC and to undergo 7 years imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 4 of POCSO Act, 2012 and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

5. No doubt, the petitioner's earlier application for suspension of sentence in Crl.M.P.(MD)No.137 of 2023 in Crl.A.(MD) No.516 of 2022 was ordered to be dismissed by this Court vide order dated 20.01.2023.



6. The learned counsel appearing for the petitioner would contend that there is no corroboration between the evidence of P.W.1 and other witnesses and the entire prosecution case is completely depending upon the sole version of P.W.2, that the delay in lodging the complaint, registration of the FIR and the FIR reaching the jurisdictional Court after long delay was not at all properly explained, that there is no plausible reason given by the trial Court for accepting the delay and that therefore, sentence imposed on the petitioner may be suspended.

7. The learned counsel appearing for the petitioner would further contend that even as per the medical evidence, there was no trace of any symptom of sexual assault and that the statement under Section 164 Cr.P.C. was not at all recorded from the victim girl.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that date of birth of the victim girl is 12.09.1999 and she was aged 15 years at the time of the alleged occurrence, that the victim girl had stated specifically that the petitioner was already married and that the victim girl was taken to various places and by compulsion, she was subjected to sexual assault and that the contention of the petitioner that the victim girl had left the house voluntarily was denied by her.

9. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and taking note of the age of the victim girl at the time of the alleged occurrence and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-

28/03/2023

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/04/2023

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

CSM

TO

1 THE SPECIAL JUDGE FOR  
EXCLUSIVE TRIAL OF POCSO ACT CASES,  
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



- 2 THE INSPECTOR OF POLICE  
SEITHUR POLICE STATION, VIRUDHUNAGAR,
- 3 THE SUPERINTEINDENT  
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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ORDER  
IN  
CRL MP (MD) No.4632 of 2023  
in  
CRL A (MD) No. 516 of 2022  
Date :28/03/2023

PKP/SSS/SAR-4/05.04.2023/ **4P/5C**