



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

Wednesday, the Twenty Ninth day of March Two Thousand and Twenty
Three
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4659 of 2023
IN
CRL A(MD)No.402 of 2022

ESAKKIPANDI ... PETITIONER/APPELLANT/SOLE ACCUSED
Vs
THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
(CRIME NO.17/2017). ... 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 execution of sentence by granting bail in Special SC.No.54/2019 dt.10/6/2022 on the file of the Learned Sessions Judge and Special Court for protection of Children From the Sexual Offence Act Cases, Tirunelveli till the disposal of CrlA

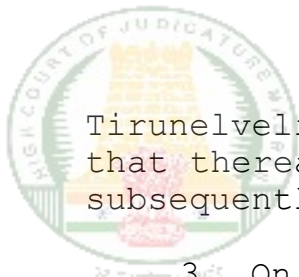
PRAYER IN CRL A(MD)No.402 of 2022:

To admit this appeal on file, to call for the records from the lower court in Special S.C.No. 54/2019 on the file of Sessions Judge & Special Court protection of Children From The Sexual Offence Act Cases, Tirunelveli District and set aside the Judgment dated 10.06.2022 by acquitting the accused and by allowing the 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.JEYAMOHAN, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor 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, Special Court for Protection of Children from Sexual Offence Act Cases, Tirunelveli, in Spl.S.C.No.54 of 2019, dated 10.06.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 22.11.2017, when the victim girl, after purchasing geometary box, was waiting in the bus stand and at that time, the petitioner/accused had approached the victim girl, shared his cellphone number and also spoke to her, that believing the words of the petitioner, she was waiting in the bus stand on 29.11.2017 at about 03.00 p.m. and she was taken to



Tirunelveli junction and later stayed in the petitioner's house and that thereafter, the victim girl was subjected to sexual assault and subsequently, she was taken to the bus stand and left there.

3. On the basis of the complaint given by the mother of the victim girl, FIR came to be registered in Crime No.17 of 2017 for the offence under Section 6 of POCSO Act. The respondent police, after completing the investigation, has laid a final report against the petitioner for the offence under Section 6 of POCSO Act.

4. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17 and exhibited 25 documents as Ex.P1 to Ex.P25. The accused has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned Judgment, dated 10.06.2022 finding the petitioner guilty for the offence under Section 6 of POCSO Act and sentenced him to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 1 year Rigorous Imprisonment. Aggrieved by the said Judgment of conviction and sentence, the accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6. No doubt, the petitioner's earlier application for similar relief in CrI.M.P.(MD)No.7303 of 2022 in CrI.A.(MD)No.402 of 2022 was ordered to be dismissed by this Court vide order dated 09.11.2022.

7. The learned counsel appearing for the petitioner would submit that though the prosecution has alleged that the victim girl was aged 16 years at that time, has failed to prove the same, that P.W.9-Headmaster of the School at Melapatamotaiyarpuram has stated that he is not aware of the age of the victim girl and that P.W.1-mother, P.W.3-father and P.W.8-sister of the victim girl and P.W.2-victim girl have been examined as important witnesses, but all of them turned hostile and as such, there is no oral evidence available to prove the case of the prosecution.

8. The learned counsel appearing for the petitioner would contend that the trial Court only on the basis of the statement recorded under Section 164 Cr.P.C. has convicted the petitioner, despite the fact that the statement of the victim girl under Section 164 Cr.P.C. has no evidentiary value, that the victim girl has stated that she was taken by the petitioner to his village and later on coming to know that the complaint was given by the mother, she was dropped in the bus stand and that she had admitted that she was married to some other boy.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that the victim girl was subjected to medical examination, that though there are no external or internal



injuries on the private part of the victim girl, the Doctor has given his opinion that there is possibility of having sexual intercourse before 3 or 5 days from the date of medical examination and that the date of birth of the victim girl is stated to be 20.02.2002.

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10. The learned Judge in the earlier order has observed that considering the immaturity of the victim girl, it appears that the accused person kidnapped the victim girl and subjected her to sexual intercourse and only on the basis of the above circumstantial evidence, the trial Court recorded the finding of guilt.

11. As rightly contended by the learned Additional Public Prosecutor, the above aspects are matter for consideration in the main appeal.

12. Considering the above facts and circumstances and also the nature and seriousness of the offence allegedly proved and taking note of the fact that the victim girl was aged about 15 years 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.

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

sd/-

29/03/2023

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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 AND
SPECIAL COURT FOR PROTECTION OF CHILDREN
FROM THE SEXUAL OFFENCE ACT CASES,
TIRUNELVELI DISTRICT.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PALAYMKOTTAI,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISION
PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.PRABHU K Advocate SR.No.5139

ORDER

IN

CRL MP (MD) No.4659 of 2023

in

CRL A (MD) No.402 of 2022

Date : 29/03/2023