



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

Monday, the Twelfth day of June Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6343 of 2023

in

CRL A(MD) No.319 of 2023

SUNDARESHWARAN @ SUNDAR

... PETITIONER/APELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
RAJAPALAYAM AWPS,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
CRIME NO.663/2020

... 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 against the petitioner in Spl S.C No. 22 of 2021 dated 10.10.2022 passed by the Learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL A(MD).319/2023 :

To call for the records in Spl.S.C.No.22 of 2021 dated 10.10.2022 passed by the Learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and to 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.KARUPPASAMY PANDIYAN G, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

RESERVED ON : 05.06.2023

DELIVERED ON : 12.06.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.22 of 2021, dated 10.10.2022, on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner by giving false promise to the victim girl that he will marry her; kidnapped the victim girl on 01.11.2020 and married her at Nallampalayam, Coimbatore, and that he had committed aggravated penetrative sexual



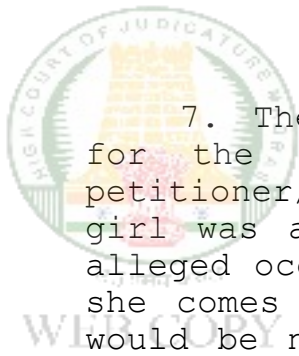
assault and that the victim was aged 15 years at the time of occurrence. On the basis of the complaint lodged, FIR came to be registered in Crime No.663 of 2020 and the respondent Police, after completing the investigation, has filed a final report for the alleged offence under Sections 366, 376 (3) of IPC and Section 6 r/w 5(1), 5(j)(ii) of POCSO Act and Section 9 of Prohibition of Child Marriage Act and the same was taken on file in Spl.S.C.No.22 of 2021 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur.

3. During the trial, the prosecution has examined 20 witnesses as P.W.1 to P.W.20 and exhibited 25 documents as Ex.P.1 to Ex.P.25 and marked one material object as M.O.1. The accused has adduced neither oral nor documentary evidence.

4. The learned trial Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 10.10.2023 convicting the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one year simple Imprisonment and convicting the petitioner for the offence under Section 9 of Prohibition of Child marriage Act and sentenced him to undergo one year Rigorous Imprisonment and pay a fine of Rs.2,000/- in default to undergo three months simple imprisonment and convicting the petitioner 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.10,000/- in default to undergo one year simple imprisonment. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that the victim girl in her evidence would say in categorical terms that herself and the petitioner had love affair and at her instance, the petitioner met her and gave a cell phone; that the victim girl would admit that she got married with the petitioner and lived together as husband and wife by taking a separate house and that the evidence of the witnesses would go to establish that the victim girl developed romantic relationship and also love affair with the petitioner and that it is not the case of unpleasant child rape.

6. The learned counsel for the petitioner would further submit that there is no discriminating material against the petitioner, except the factum of love affairs and marriage and that the petitioner has been in prison from the date of arrest till now and that the trial of the case was conducted behind his back even without letting on bail to give instruction.



7. The learned Government Advocate (Criminal Side) for the State would submit that the grounds raised by the petitioner/appellant are vague and unsustainable; that the victim girl was aged only 15 years. 5 months and 4 days at the time of alleged occurrence and her date of birth is 27.05.2005 and as such, she comes under the category of child; that the consent of minor would be no defence to a charge of kidnapping and that the trial Court has rightly observed that on conjoint reading of evidence of the child victim and statement under Section 164 Cr.P.C., the accused induced and deceived the child under the pretext of marriage and lifted the child victim to Coimbatore and committed the sexual intercourse with the child repeatedly and in view of frequent sexual intercourse, the minor child has become pregnant and subsequently, it was aborted.

8. As rightly contended by the learned Government Advocate (Criminal Side), the aspects/points canvassed by the learned counsel for the petitioner are matter for consideration in the appeal and are not sufficient enough to suspend the sentence.

9. Considering the facts and circumstances of the case and also the seriousness and gravity of the offence allegedly proved and also taking note of the age of the victim and the punishment imposed by the trial Court and also considering the fact that the impugned judgment was passed on 10.10.2022 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/-

12/06/2023

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/06/2023

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

das

TO

- 1 THE JUDGE, SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE, RAJAPALAYAM AWPS,
RAJAPALAYAM, VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.6343 of 2023
in CRL A(MD) No.319 of 2023

Date :12/06/2023