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CRL MP(MD)



23

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

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

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL MP(MD) No.6092 of 2023
in
CRL A(MD) No.715 of 2022

MUTHUKUMAR

... Petitioner / Appellant /
Accused

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
SHOLVANDAN POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.515 OF 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 Sentence imposed against the Petitioner/Appellant in S.S.C.No.96 of 2018 by the Sessions Judge, Principal Special Court for exclusive trial of cases under POCSO Act, Madurai on 27.9.2022 and to enlarge the Petitioner/Accused on bail, pending disposal of the Criminal Appeal.

Prayer in CRL A(MD). 715/ 2022 :

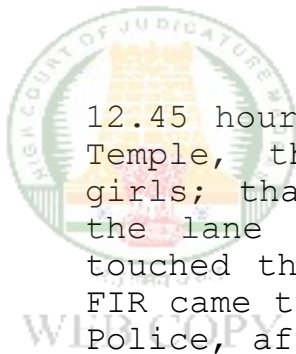
To call for records and to set aside the judgment dated 27.09.2022 in S.S.C.No.96 of 2018 on the file of the Sessions Judge, Principal Special Court for exclusive trial of cases under POCSO Act, Madurai and acquit the appellant/accused.

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.RAMASUBRAMANIAN 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:-

Reserved on : 18.04.2023
Delivered on : 24.04.2023

The Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai in S.S.C.No. 96 of 2018, dated 27.09.2022, and enlarge the petitioner on bail, pending disposal of the appeal.

<https://www.mhc.tn.gov.in/> The case of the prosecution is that on 10.10.2017 at about



12.45 hours, when the two victim girls were playing near Temple, the petitioner/accused came and gave chocolates to the girls; that the accused thereafter, brought the victim girls near the lane and he removed the school uniform of the children and touched their private parts. On the basis of the complaint lodged, FIR came to be registered in Crime No.515 of 2017 and the respondent Police, after completing the investigation, has filed a final report for the alleged offences under Sections 7 r/w 8 of POCSO Act and the same was taken on file in Spl.S.C.No.96 of 2018 and the same was pending on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.

3. It is evident from the records that the charges were framed against the accused for the offence under Sections 7 r/w 8 (2 counts) POCSO Act and subsequently, charges were altered into Section 9(m) r/w 10 (2 counts) of POCSO Act.

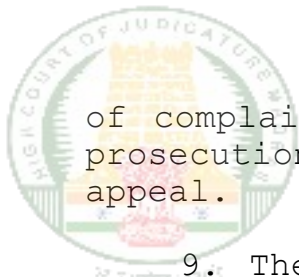
4. During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17 and exhibited 14 documents as Ex.P.1 to Ex.P.14 and the proceedings under Section 164 of Cr.P.C has been marked as Ex.C.1. The accused has adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the judgment, dated 27.09.2022, convicting the accused for the offence under Section 9(m) r/w 10 of POCSO Act (2 counts) and sentenced him to undergo 5 years rigorous imprisonment for each count and to pay a fine of Rs.10,000/- in default to undergo 6 months simple imprisonment for each count. The accused, aggrieved by the judgment of conviction and sentence, has preferred criminal appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6. No doubt, the petitioner's earlier two applications for suspension of sentence were ordered to be dismissed by this Court and lastly by 19.01.2023.

7. The learned counsel for the petitioner would submit that the trial Court erred in convicting the petitioner solely on the basis of the interested and inimical evidence of witnesses belonging to the family of the victims and that the trial Court should have disbelieved the evidence of child witnesses P.W.2 and P.W.3 as their evidence was tutored by the interested and inimical parties so as to incriminate the petitioner and to discard the role of other persons, who were present at the time of occurrence as admitted by P.W.5.

8. The learned counsel for the petitioner would further submit that the evidence of P.W.4 to P.W.6 are highly unbelievable as those evidences were based on hearsay; that the prosecution has failed to



of complaint; that there was no independent witness let in the prosecution and that the petitioner is having a good chance in the appeal.

9. The learned Additional Public Prosecutor appearing for the State would submit that both the victims had adduced cogent and convincing evidence; that the victims were aged 6 and 7 years at the time occurrence and that the trial Court, by considering the evidence available on record, has rightly convicted the accused.

10. Considering the nature and gravity of the offence allegedly proved against the petitioner and also taking note of the age of the victims girl and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

11. 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 Sessions Judge,
Principal Special Court for
exclusive trial of cases under POCSO Act,
Madurai.

2.The Inspector of Police,
Sholavandan Police Station,
Madurai 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.6092 of 2023
in
CRL A(MD) No.715 of 2022
Date :24/04/2023