



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

Wednesday, the Fourteenth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6378 of 2023

IN

CRL A(MD)No. 649 of 2022

MARISELVAM

... PETITIONER/APPELLANT

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
IN CRIME NO.1155/2017.

... 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 by the Learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Special Sessions Case No.17/2018 dt.12/7/2022 and enlarge the petitioner/sole accused on bail till the disposal of the Crl.Appeal.

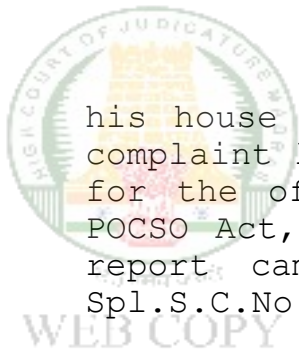
PRAYER IN CRL A(MD)No.649 of 2022:

Pleased to admit this appeal on file and call for the records from the Lower court and set aside the Judgment passed by the Learned Special Court for POCSO Act cases, virudhunagar District at Srivilliputhur in special Sessions Case No. 17 of 2018 dated 12.07.2022 by allowing this 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.MAYA PERUMAL S, 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 petition has been filed to suspend the sentence imposed in Spl.S.C.No.17 of 2018, dated 12.07.2022, 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 on 29.11.2019, when the complainant, who is the mother of the victim, has returned to her home, the victim told her that the petitioner has brought him to



his house and sexually assaulted him and that on the basis of the complaint lodged, FIR came to be registered in Crime No.1155 of 2017 for the offences under Sections 342 I.P.C., and 5(1)(m) r/w 6 of POCSO Act, 2012 and that after completing the investigation, final report came to be filed and the same was taken on file in Spl.S.C.No.17 of 2018.

3. During trial, the prosecution has examined 11 witnesses as P.W.1 to P.W.11 and exhibited 10 documents as Ex.P.1 to Ex.P.10. The accused has adduced neither oral nor any documentary evidence.

4. The learned Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the judgment dated 12.07.2022, convicting the petitioner/accused under Section 5(m) r/w 6 of POCSO Act and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, simple imprisonment for a period of one year. Aggrieved by the conviction judgment, the accused has preferred the present appeal.

5. The learned Counsel for the petitioner would submit that the evidence of P.W.1 is not reliable regarding the time of occurrence, as the time of occurrence according to the complaint is on 29.11.2017 at 03.15p.m., , whereas P.W.1 would depose that she has come to know about the occurrence at 03.00p.m., on 29.11.2017 and that the above material contradiction has not been considered by the learned trial Judge, that the prosecution has suppressed the earliest information which was given by P.W.1 to the police at hospital, that the unnatural conduct of the parents of the victim raises serious doubt about the reliability of the prosecution case itself, that the evidence of the victim is not wholly reliable as he had not deposed about the date and time of occurrence and that the overt act alleged by the victim would not attract the offence under Section 5(m) of POCSO Act.

6. The learned Counsel for the petitioner would further contend that the prosecution has not established that the victim was wrongfully confined by the petitioner at the time of occurrence and that is why the petitioner was acquitted from that offence and that once the prosecution has failed to establish the offence of wrongful confinement, then what had happened subsequently in the house of the petitioner, it loses its importance. He would further submit that one day prior to the occurrence, there was a fight between the father of the complainant and the brother of the petitioner and as a result, the complainant's father sustained injury and due to that motive, a false complaint has been lodged, that the evidence of P.W.1 and other witnesses are not credible and trustworthy and that therefore, the trial Court has committed a grave error in convicting the petitioner.



7. No doubt, the petitioner's earlier two applications for similar relief were ordered to be dismissed, lastly vide order dated 13.02.2023.

8. The learned Additional Public Prosecutor appearing for the State would submit that all the points now canvassed are matter for consideration in the main appeal and are not sufficient enough to suspend the sentence.

9. As rightly pointed out by the learned Additional Public Prosecutor, the petitioner has not shown any change of circumstances since the dismissal of the earlier petitions. Considering the seriousness and the gravity of the offence alleged by proved and also the way in which the petitioner has misbehaved with the victim boy, aged about 5 years and also taking note of the fact that the impugned judgment was passed only on 12.07.2022 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/-

14/06/2023

/ TRUE COPY /

/06/2023

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

SSL

TO

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

ORDER

IN

CRL MP(MD) No.6378 of 2023

IN

CRL A(MD) No. 649 of 2022

Date :14/06/2023