



CRL MP(MD) No.7698 of 2023

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

Thursday, the Twentieth day of July Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.K.RAMAKRISHNAN

CRL MP(MD) No.7698 of 2023

IN

CRL A(MD) No.414 of 2023

SURJITHKUMAR

... APPELLANT/ ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
KODAL PUDUR POLICE STATION,
MADURAI DISTRICT.
CR.NO.907/2018

... 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 on the petitioner by the judgment date 10.03.2023 made in special S.C.No.39/2019 on the file of the Principal Special Court for exclusive trial of case under POCSO Act passed and enlarge the petitioner on bail pending disposal of the above Appeal.

PRAYER IN CRL.A(MD).414/2023:

Pleased to suspend the sentence and enlarge the petitioners on bail imposed on the appellant by the judgment dated 10/03/2023 made in Special S.C.No.39 of 2019 on the file of the Principal Special Court for Exclusive Trial of cases under POCSO Act, pending disposal of the above 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

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M/S.MURUGANANTHAM.B.A, Advocate for the petitioner and of Mr.T.SENTHIL KUMAR, 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 passed in S.C.No.39 of 2019, dated 10.03.2023, on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, and enlarge the petitioner on bail till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the victim girl is a minor. On 06.10.2018, the petitioner took custody of the victim girl to Velampalayam, Tirupur upon making false promise that he would marry her and had committed the offence of aggravated penetrative sexual assault upon her. So, she made a complaint.

3. On the basis of the complaint, the respondent police registered the FIR in Crime No.907 of 2018 for the offences under Sections 366 of IPC and 5(1) r/w 6 of POCSO Act, 2012.

4. The respondent police, after completing the investigation, has laid a final report for the offences under Sections 366 of IPC and 5(1) r/w 6 of POCSO Act, 2012



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before the the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai. The learned Special Judge has taken the case on file in S.C.No.39 of 2019 and thereafter, conducted trial as per procedure stated in code of Criminal Procedure.

5. During the trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and exhibited 20 documents as Ex.P.1 to Ex.P.20 and marked 8 Material Objects as P.M.O.1 to P.M.O.8, whereas, the accused has adduced neither oral nor documentary evidence.

6. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 10.03.2023 and convicting the petitioner/accused for the offences under Sections 366 of IPC and 5(1) r/w 6 of POCSO Act, 2012. He was sentenced to undergo 10 years Rigorous Imprisonment for each offence and to pay a fine of Rs.5,000/- for each offence in default, to undergo 1 year Simple Imprisonment for each offence. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.



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7. The learned counsel for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

8. He would further submit that at the time of occurrence, the victim girl was not a minor girl as alleged by the prosecution. She was not below 18 years. The same was recorded in the number of documents of the prosecution. He would further submit that the victim girl already married a person and subsequently, got divorced. Thereafter, it is alleged that she had love affair with the petitioner and had sexual relationship.

9. He would further submit that the victim girl specifically deposed before the Court and the Doctor who had conducted initial examination that there was no sexual intercourse as alleged by the prosecution and hence, he seeks suspension of sentence.

10. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.



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11. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

12. This Court finds force in the submission of the learned counsel for the petitioner. From the number of the records produced by the prosecution, the age of the victim is 18 years. Even before she had love affair with the petitioner, she married someone person and got divorce. So, the age is probably more than 18. It is the specific case of the victim girl during the medical examination, she was not subjected to the aggravated sexual assault at the hands of the petitioner. Further, in the absence of any corroborative medical evidence, there is a merits in the submission of the petitioner that there is no aggravated penetrative sexual assault committed by the petitioner. In addition to that, the petitioner was confined in the prison from 10.03.2023 onwards and fine amount was already paid.

13.1. Considering the above special circumstances of the case, this Court is inclined to grant suspense of sentence.

13.2. Apart from that, certain infirmities and inconsistencies in this case and



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also certain contradictions in material particulars brought to the knowledge of this Court and hence, this Court prima facie feels that that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

14. Accordingly, the relief of suspension of sentence is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court once in



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a month i.e., on first working day of every English calendar month at
10.30 a.m., till the disposal of the appeal.

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sd/-
20/07/2023

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20/07/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSS
TO
1 THE PRINCIPAL SPECIAL JUDGE
FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
KODAL PUDUR POLICE STATION,
MADURAI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.MURUGANANTHAM.B.A Advocate SR.No.10964

ORDER IN
CRL MP(MD) No.7698 of 2023
IN CRL A(MD) No.414 of 2023
Date :20/07/2023

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