



CRL MP(MD) No.9172 of 2023

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

Tuesday, the Twelfth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.9172 of 2023

in

CRL A(MD)No.479 of 2023

G.PANDIYAN

NOW CONFINED AT CENTRAL PRISON,
MADURAI.

... PETITIONER/ APPELLANT/ SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SRIVILLIPUTHUR,
SRIVILLIPUTHUR TOWN POLICE STATION.
(CRIME NO.694/2013),
VIRUDHUNAGAR DISTRICT.

... RESPONDENT/RESPONDENT/COMPLAINANT

Criminal Miscellaneous 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.20 of 2020 dated 19.09.2022 on the file of the learned Sessions Judge and Special Court for protection of children From the Sexual Offence Act Cases, Srivilliputhur, Virudhunagar District till the disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.479 of 2023:

To admit this appeal on file, to call for the records from the lower court in Special S.C.No.20/2020 on the file of Sessions Judge & Special Court for protection



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of Children from the Sexual Offence Act cases, Srivilliputhur, Virudhunagar District and set aside the judgment dated 19.09.2022 by acquitting the accused and by allowing the Appeal.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.RAGAVENTHRE.S, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

Reserved on : 22.11.2023

Pronounced on : 12.12.2023

The petitioner has filed this petition to suspend the execution of sentence imposed against him by the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Spl.S.C.No.20 of 2020 by judgment dated 19.09.2022 and enlarge him on bail till the disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The petitioner is a married man. The victim is 17 years old. The victim used to visit the petitioner's house and the petitioner used to mock her. Four months back when the victim came to the petitioner's house, the petitioner had a sexual relationship with her against her consent by saying he would marry her. Again on 09.11.2013 at 03.00 p.m. when the victim was lonely in her house, the petitioner forcibly took her under false promise of marriage and forcibly kidnapped her to Kalakkadu and there he had a sexual relationship against her consent in a detached



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house, and again in Tiruchendur sea shore at the remote place he also forcibly had a sexual relationship with the victim against her consent. In the mean time, the father of the victim lodged a police complaint before the All Women Police Station, Srivilliputhur and F.I.R was registered in Crime No.694 of 2013. The victim was secured as per order passed by this Court in a Habeas Corpus Petition. During the investigation, the victim girl narrated the incidents. After completion of investigation, the respondent police laid charge sheet against the petitioner for the offence under Sections 366(A), 376 of IPC and under Section 4 of POCSO Act 2012.

3. To prove the charge, the prosecution examined 18 witnesses as P.W.1 to P.W.18 and marked 12 exhibits as Ex.P1 to Ex.P12 and marked 9 material object as M.Os.1 to 9. The petitioner/accused has not examined any witness and not marked any document. Ex.C.1 and Ex.C.2 are also marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 4 of POCSO Act and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of one year and the petitioner was not found guilty for the offence under Section 366(A) of IPC and acquitted by passing impugned judgment dated 19.09.2022.



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4. Aggrieved by the conviction judgment, the petitioner/accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the appeal.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. The learned counsel for the petitioner has submitted that the victim girl was major at the time of occurrence as per evidence of P.W.1. P.W.1 deposed that the victim was aged 17 years when she was doing 12 standard and thereafter she worked for 2 years and she was aged 18 years at the time of occurrence. So, the POCSO Act would not attract. PW16 clearly deposed that the victim used to visit the petitioner and they developed contacts and eloped. Both have sexual relationships and there was no refusal or objection by the victim girl. The victim girl also knew about the marital status of the petitioner. The evidence of P.W.1 clearly substantiate the same. The Trial Court has misconstrued the settled propositions of law and convicted the petitioner. The petitioner has a fair chance of succeed in the appeal. The petitioner is in prison for more than 14 months from 19.09.2022. The petitioner has to maintain his family. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.



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7. Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended that the Trial Judge has elaborately discussed the contentions of the petitioner along with the oral and documentary evidence adduced by the prosecution and come to the conclusion that the petitioner forced the victim/PW1, who was 17 years, under the false promise of marriage and had a physical sexual relationship. The prosecution marked school TC of the victim girl to prove her age. The PW5 – Doctor also deposed that the hymen was not intact. The period of incarceration is immaterial. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence.

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner and the prosecutrix/PW1 had developed contact between them and PW1 knew about the marital status of the petitioner. On perusal of evidence of P.W.1, she deposed about her visit to the petitioner's house and both went to out of station and also about the sexual relationship. It is the definite case of the petitioner that the victim girl was major at the time of occurrence and both eloped. However, these are to be decided while deciding the appeal on merits. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this



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case and also certain admissions. The fact remains that there are arguable points involved in this criminal appeal as stated supra and further the criminal appeal is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison for more than 14 months from the date conviction. In the above circumstances, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal 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 learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur;

(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



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(iii) The petitioner shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
12/12/2023

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12/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD
TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR PROTECTION OF CHILDREN
FROM THE SEXUAL OFFENCE ACT CASES,
SRIVILLIPUTHUR, VIRUDHUNAGAR DISTRICT.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SRIVILLIPUTHUR,
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 cc to M/S.RAGAVENTHRE.S, Advocate , SR.No.56543 (F) DT.14/12/2023

ORDER IN
CRL MP(MD) No.9172 of 2023
in
CRL A(MD)No.479 of 2023
Date :12/12/2023

SS/SAR- /12/12/2023/7P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023