



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

Thursday, the Twenty Second day of June Two Thousand and  
Twenty Three  
PRESENT

WEB COPY

**The Hon`ble Mr.Justice K.MURALI SHANKAR**

CRL MP(MD) No.7003 of 2023  
IN  
CRL A(MD) No.544 of 2022

RAMU

... APPELLANT/SOLE ACCUSED

**Vs**

THE STATE REP.BY  
THE INSPECTOR OF POLICE  
ALL WOMEN POLICE STATION,  
KUMBAKONAM.  
CR.NO.19/2019

... 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 by the Judgment dt 11.08.2022 made in Spl.S.C.No.27/2020 on the file of Special Court under POCSO Act Thanjavur and enlarge the petitioner on bail pending disposal of the above appeal and thus render justice.

**PRAYER IN CRL.A(MD) .544/2022:**

Pleased to call for the records relating to the judgment dated 11.08.2022 made in Spl.S.C.No.27 of 2020 on the file of Special Court under POCSO Act, Thanjavur and set aside the conviction and sentence imposed against the Appellant and allow above appeal by acquitting the Appellant.

**Order :** This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.ALTHAFF SHERIFF, Advocate for M/S.AJMAL ASSOCIATES, for the petitioner and of Mr.SS.MADHAVAN, Government Advocate (crl.side) on behalf of the Respondent, the court made the following order:-

|                      |                   |
|----------------------|-------------------|
| <b>RESERVED ON</b>   | <b>06.06.2023</b> |
| <b>PRONOUNCED ON</b> | <b>22.06.2023</b> |

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.27 of 2020, dated 11.08.2022, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the victim child was aged about 9 years and was studying in a primary school, that the petitioner was aged about 85 years, that the victim child is suffering from Moderately Intellectual Disability illness and she is to attend the school by going through the house of the petitioner and at that time, the petitioner used to invite the victim child by giving biscuits and other snacks and touched her private parts and caused sexual assault that was continued for some time, that on 23.12.2019 at about 09.30 hours, as usual again this petitioner invited the victim child by giving biscuits and sexually assaulted her and that when the witness Valliammal shouted out about the behaviour of the petitioner, the door was opened by the petitioner and he left the victim child and on that basis, FIR came to be registered in Crime No.19 of 2019.

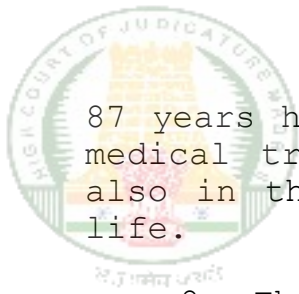
3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 9(k), (l), (m) r/w 10 of POCSO Act and the case was taken on file in Spl.S.C.No.27 of 2020 and the same was pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

4. During trial, the prosecution has examined 19 witnesses as P.W.1 to P.W.19 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The defence has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 11.08.2022 convicting the petitioner for the offences under Section 9(m), (l), (k) instead of (n) which are all punishable under Section 10 of POCSO Act and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.30,000/-, in default, to undergo 1 year Rigorous Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal.

6. The learned counsel appearing for the petitioner would submit that reliance placed by the learned trial Judge on the evidence of P.W.1, who is mentally ill cannot be sustained, that the Doctor, who examined P.W.1, had given medical certificate under Ex.P.6 stating that the victim child is suffering from moderately intellectual disability and as such, she was not able to face the trial, that the witness alleged to have witnessed the occurrence P.W.7 has turned hostile and that the learned trial Judge has convicted the petitioner on the conjectures and surmises without any material available on record.

7. The learned counsel appearing for the petitioner would submit that the learned trial Judge has intended that the petitioner is a senior citizen aged about



87 years having so many diseases and the petitioner has to go for medical treatment with the specialist for his ailments and he is also in the dire need of help of others to lead last days of his life.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the entire chief and cross-examination of P.W.1 revealed that the victim child had noted the petitioner as kizhavan and categorically stated that the petitioner called her to give biscuits in his house and assaulted her sexually, that since the victim child is mentally ill, the trial Court had taken the assistance of the special teacher / interpreter P.W.2 for recording the evidence of the victim child as provided under Section 38(2) of POCSO Act, that the victim child was aged 9 years at the time of alleged occurrence and that the trial Court, considering the evidence available on record in proper perspective, has recorded the conviction.

9. No doubt, the petitioner's earlier application for suspension of sentence in Crl.M.P.(MD)No.10633 of 2022 was ordered to be dismissed by this Court vide order dated 19.09.2022.

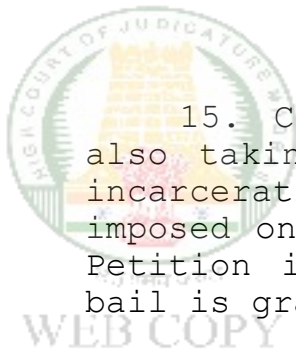
10. The learned counsel appearing for the petitioner would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that the petitioner has already paid the fine amount.

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

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

13. The learned counsel appearing for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains 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 and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

14. Admittedly, the petitioner is aged 87 years and is having various ailments and he was imposed 5 years rigorous imprisonment vide judgment dated 11.08.2022.



15. Considering the facts and circumstances of the case and also taking note of the age of the petitioner and the period of incarceration, this Court is inclined to suspend the sentence imposed on the petitioner. Accordingly, this Criminal Miscellaneous Petition is allowed and the relief of suspension of sentence and bail 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 Sessions Judge, Mahila Court, 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 trial Court daily on all working days at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-

22/06/2023

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22/06/2023

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

CSM

TO

1 THE SESSIONS JUDGE,  
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES  
UNDER POCSO ACT, THANJAVUR.

2 THE SESSIONS JUDGE, MAHILA COURT, MADURAI.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

4 THE INSPECTOR OF POLICE  
ALL WOMEN POLICE STATION, KUMBAKONAM.

**+1. C.C. to M/S.AJMAL ASSOCIATES, SR.No.9461 (I) Dt.23/06/2023**

**ORDER IN**

CRL MP(MD) No.7003 of 2023  
IN CRL A(MD) No.544 of 2022  
Date :22/06/2023

SA/VR/SAR. /23.06.2023/4P/6C

<https://www.mhc.tn.gov.in/judis>