



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

Tuesday, the Fourth day of July Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.7747 of 2023
in
CRL A(MD) No.423 of 2023

SELVAPRABU

... Petitioner / Appellant

Vs

STATE REP BY
THE ASSISTANT COMMISSIONER OF POLICE,
ANTI-DOWRY CELL,
ALL WOMEN POLICE STATION,
THALLAKULAM,
MADURAI DISTRICT.
(CRIME NO.30 OF 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 Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai by its Judgment dt.2.3.2023 in Spl.SC.No.57 of 2017 pending disposal of this Criminal Appeal.

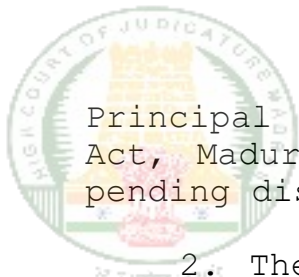
Prayer in CRL A(MD). 423/ 2023 :

To call for the records pertaining to the impugned Judgment in Special S.C.No.57 of 2017 dated 02.03.2023, on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai and set aside the same by allowing this appeal and 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 M/S.RAJESWARAN R, Advocate for the petitioner and of Mr.SS.MADHAVAN, Government Advocate (Crl. side) on behalf of the Respondent, the court made the following order:-

Reserved on : 26.06.2023
Delivered on : 04.07.2023

This petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.57 of 2017, on the file of the



Principal Special Court for Exclusive Trial of cases under PO Act, Madurai, dated 02.03.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

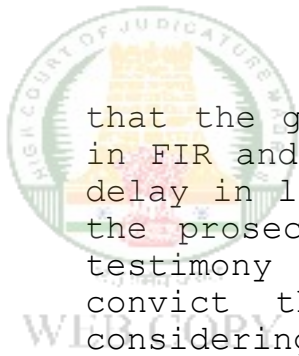
2. The case of the prosecution is that the victim child aged about 4 years; that the petitioner is the van driver, who used to pick up the school children at morning and dropped at evening; that on 19.06.2017, the petitioner has picked up the victim child in his van at morning and after completion of school, he has picked up the victim child from the school and dropped her with half-an-hour delay; that the accused misbehaved with the victim child and removed her pant with sexual intent and that the accused had also threatened the victim child not to inform the above incident to anyone; that when the mother of the girl asked her, she narrated the entire facts to her mother and based on the complaint, FIR came to be registered; that the respondent Police, after completing the investigation, has laid the final report against the accused for the offence under Section 5(m) r/w 6 of POCSO Act 2012, Section 506(i) IPC and Section 3(2)(v) of SC/ST (POA) amendment act, 2015.

3. During trial, the prosecution has examined 19 witnesses as P.W.1 to P.W.19 and exhibited 25 documents as Ex.P.1 to Ex.P.25 and marked one material object as M.O.1. The defence has examined the accused as D.W.1 and adduced no documentary evidence and that the proceedings for recording statement under Section 164 Cr.P.C has been marked as Ex.C.1.

4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 02.03.2023, finding the accused guilty for the offences under Sections 5(m) r/w 6 of POCSO Act and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months. Aggrieved by the judgment of conviction and sentence, the accused has come forward with the present appeal.

5. The learned counsel for the petitioner would submit that the evidence of P.W.1, P.W.3 and P.W.4 are self-contradictory; that though it has been stated in the complaint that P.W.6/Doctor found injury in private parts, P.W.6 in her evidence stated that she did not find any injury on the victim; that the Doctor, who first treated the victim child was not at all examined; that P.W.9 / Government Doctor found that the hymen of the victim was intact and as such the allegation against the petitioner is a fabricated one, that the trial Court has rightly acquitted the petitioner for the offence under Section 506(i) IPC and under Section 3(2)(v) of SC/ST (POA) Act and that the trial Court without considering the material aspects has mechanically recorded the conviction for the offence under POCSO Act.

<https://www.mhc.gov.in> The learned Government Advocate (Criminal Side) would submit



that the grounds raised by the petitioner such as vengeance may in FIR and presumption were duly discussed by the trial Court; that delay in lodging the complaint by itself is not sufficient to doubt the prosecution case and that too in POCSO cases; that the sole testimony of the victim girl by itself is sufficient enough to convict the culprit and that the learned trial Judge, upon considering the evidence available on record, has rightly convicted the petitioner/accused.

7. It is pertinent to note that the victim child was aged 4 years at the time of alleged occurrence and the accused is a school van driver taking the victim child to school.

8. As rightly contended by the learned Government Advocate (Criminal Side), the points/aspects now canvassed by the petitioner side are matter for consideration in the main appeal and the same are not sufficient enough to suspend the sentence of the petitioner at this point of time.

9. Considering seriousness and gravity of the offence allegedly proved against the petitioner and also taking note of the age of the victim and also the fact that the impugned judgment was passed on 02.03.2023 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/-
04/07/2023

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/07/2023

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 Assistant Commissioner of Police,
Anti-Dowry Cell,
All Women Police Station,
Thallakulam.
Madurai District.



CRL MP(MD)



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3.The Superintendent,
Central Jail, Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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ORDER

IN

CRL MP (MD) No.7747 of 2023
in

CRL A (MD) No.423 of 2023

Date :04/07/2023

ED/DD/SAR- (11/07/2023) 4P 5C