



CRL MP(MD) No.8775 of 2023

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

Thursday, the Thirtieth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.8775 of 2023

in

CRL A(MD)No.16 of 2023

THIYAGARAJAN ... PETITIONER/ APPELLANT/ SOLE ACCUSED
(NOW CONFINED AT CENTRAL PRISON,
PALAYAMKOTTAI)

Vs

State Rep.by
THE INSPECTOR OF POLICE
ALL WOMAN POLICE STATION,
AMBASAMUDRAM,
TIRUNELVELI DISTRICT.
(CRIME NO.12 OF 2018) ... 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 Case No.225 of 2019 dated 05.12.2022 on the file of the learned Sessions Judge and Special Court for Protection of Children from the Sexual Offence Act Cases, Tirunelveli till the disposal of the Criminal Appeal.

Prayer in CRL A(MD).16/2023 :

To admit this appeal on file, to call for the records from the lower court in Special Case No.255/2019 on the file of Sessions Judge & Special Court for



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protection of Children from the Sexual Offence Act Cases, Tirunelveli District and set aside the judgment dated 05.12.2022 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 Mr.V.KATHIRVELU, Senior Counsel for M/S.PRABHU.K., 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 : 24.11.2023
Pronounced on : 30.11.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special Case No.225 of 2019, dated 05.12.2022 by the learned Sessions Judge, Special Court for Protection of Children from Sexual Offences Act Cases, Tirunelveli and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim is aged about 17+ at the time of the alleged occurrence. On 11.11.2020, PW1 the mother of the victim girl returned to home and at that time, the victim girl was crying. On enquiry, she replied that she was in love with the petitioner and promising to marry her, the petitioner had sexual intercourse with her and later, refused to marry. On the basis of the above said occurrence, the case was registered for the offences under section 376 IPC and section 6 of POCSO Act,



2012. After completing the formalities of investigation, final report was filed against the petitioner and the case was taken on file in Special Case No.225 of 2019 by the trial Court.

3.To prove the guilt of the accused, on the side of the prosecution, 13 witnesses have been examined as P.W.1 to P.W.13 and 26 documents were marked as Ex.P1 to Ex.P26. On the side of the accused, no witness was examined and no document was exhibited.

4.At the conclusion of the trial, the trial court found the petitioner guilty and convicted him for the offence under section 6 of POCSO Act and sentenced to undergo 10 years rigorous imprisonment and imposed a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a period of one year. Against which, the Criminal Appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by the petitioner.

5.The learned counsel appearing for the petitioner would submit that on the date of the alleged occurrence, the victim was aged about 17+ and it was purely a love affair and to prove the age of the victim girl, no proper proof was produced before the trial court and only the transfer certificate was produced. Now both of them married to some other person. He would further submit that this is the second application for suspense of sentence and the earlier application was dismissed by



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this Court on 30.01.2023 in CrI.M.P(MD)No.329 of 2023 in CrI.A(MD)No.16 of 2023

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and now considering the period of incarceration as the change of circumstance, he prays for suspension of sentence and bail for the petitioner.

6.Per contra, the learned Additional Public Prosecutor would submit that even though the victim girl is aged about 17+ at the time of the occurrence, later, the petitioner refused to marry her. He would further submit that this is the second application and the earlier application was dismissed by this Court on 30.01.2023 and hence, he strongly opposed to grant suspension of sentence.

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

8. The learned counsel 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 it is a case of love affair and now both of them married to some other person and the petitioner is in judicial custody from 05.01.2023, 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.



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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/ Accused is directed to be enlarged on bail on condition that the petitioner/ Accused 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, Tirunelveli;
- (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/ Accused shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-

30/11/2023

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30/11/2023

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 SEXUAL OFFENCES ACT CASES, TIRUNELVELI.



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2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI DISTRICT.

3 THE INSPECTOR OF POLICE
ALL WOMAN POLICE STATION, AMBASAMUDRAM,
TIRUNELVELI DISTRICT

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

+1. C.C. to M/S.PRABHU K Advocate SR.No.54154(F)

ORDER
IN
CRL MP(MD) No.8775 of 2023
in
CRL A(MD)No.16 of 2023
Date :30/11/2023

SS/SAR- /30/11/2023/6P/6C

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