



CRL MP(MD) No.8997 of 2023

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

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

PRESENT

The Hon`ble Mr.Justice P.VADAMALAI

CRL MP(MD) No.8997 of 2023

IN

CRL A(MD) No.471 of 2023

NATHIYA

... PETITIONER/ APPELLANT/
ACCUSED 2/ ACCSED 3

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT
(CRIME NO.15 OF 2022)

... RESPONDENT/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 sentence imposed in judgment dated 02.05.2023 made in Spl.SC.No.195 of 2022 on the file of the Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail.

PRAYER IN CRL.A(MD).471/2023:

Pleased to call for records and set aside the Judgment dated 02.05.2023 passed in Spl.S.C.No.195 of 2022 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur.

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

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M/S.ARUN SRIVASTAVA M, 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 : 31.10.2023

Pronounced on : 16.11.2023

The petitioner has filed this petition to suspend the sentence imposed against her in judgment dated 02.05.2023 made in Spl.S.C.No.195 of 2022 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and to enlarge her on bail till the disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The mother of the victim female child is the sister of the 1st accused. After birth of victim child, her mother eloped with someone leaving the child with the 1st accused. The petitioner is the wife of the 1st accused and she is originally arrayed as Accused No.3. Accused Nos.1 and 2 brought the victim child as foster parents. Viswabharathi/Accused No.2 is the son of 1st accused and petitioner, who is a juvenile accused. During the absence of the petitioner and 1st accused, the said juvenile accused committed aggravated penetrative sexual assault against the victim girl on several occasions for the past 6 months preceding the date of complaint and he used to cauterize the child with heated kitchen articles. The 1st accused, who is the father of the juvenile accused, also cauterized the victim child with kitchen tools and



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caused burn injuries in her thigh and buttocks. Though the petitioner had knowledge about the commission of offence by Accused No.1 and juvenile accused, she never bothered about and abetted the Accused No.1 and juvenile accused as the victim urinated in bed. On 11.08.2022 at 10.42 p.m when the commission of offence came to knowledge of P.W.1, who is an officer of Child Line Sub Centre, Aruppukottai lodged a criminal complaint before the All Women Police Station, Aruppukottai against the accused. FIR was registered in Crime No.15 of 2022 under Sections 324, 376 (AB), 506 (i) of IPC and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 5(l), 5(m), 5(n), 5(i), 5(h), 6, 16 and 17 of POCSO Act, 2012 against the accused. P.W.7 - Inspector of Police did investigation and laid charge sheet. The case against the juvenile accused was split up and is pending before the Juvenile Justice Board, Virudhunagar. The petitioner was charged for the offences under sections stated above.

(i) To prove the charge, the prosecution examined 6 witnesses as P.W.1 to P.W.7 and marked 10 exhibits as Ex.P1 to Ex.P10 and two MOs marked. On the defence side, no witness was examined and no exhibit was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty under Section 6 r/w 17 of the POCSO Amendment Act and convicted and sentenced her to undergo 20 years Rigorous Imprisonment and to pay



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a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months and for the offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 convicted and sentenced her to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months by passing impugned judgment dated 02.05.2023.

3. Aggrieved by the conviction judgment, the 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 disposal of appeal.

4. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

5. The learned counsel for the petitioner has submitted that the victim girl is daughter of the sister of the petitioner's husband. The mother of the victim girl eloped with some one leaving the child with them and they brought the girl. The petitioner had no knowledge about the alleged offence committed by her husband Accused No.1 and her son juvenile accused. Originally FIR was registered against Accused No.1. The child did not disclose the alleged offence to the petitioner and she was falsely arrayed as an accused. There is no evidence adduced by the material witnesses with regard to abetment of the petitioner. The petitioner was not



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questioned about such abetment even questioning under Section 313 Cr.PC. The petitioner never committed the alleged offence upon the victim child. The petitioner is a lady and she is in prison for the past six months. The petitioner has fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 5 years old at the time of alleged occurrence. The victim child narrated the crime committed by the accused before P.W.1. The victim as P.W.2 clearly deposed about the cauterize by the petitioner. The petitioner is living under same roof and definitely she knew about the crimes, that has been committed by the juvenile accused for past six months. But, the petitioner being lady failed to save the victim girl, so she complained before P.W.1, who had come knowledge through helpline. Doctor evidence is clear about the sexual assault and cauterise over the victim girl. Mere not stating about abetment and not questioning under Section 313 Cr.P.C., the same would not affect the prosecution case. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the accused as stated therein. The petitioner is a lady and her period of custody are immaterial. The gravity of offence committed by the petitioner has to be looked in this case, that too committed upon 5 years old foster female child.



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Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail and relied on the following citations:

(1) (2020) 10 Supreme Court Cases 573 (Ganesan Vs. State represented by its Inspector of Police)

(2) 2022 Live Law (SC) 142 (Nawabuddin Vs. State of Uttarakhand)

(3) (1996) 2 Supreme Court Cases 384 (State of Punjab Vs. Gurmit Singh and Others)

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the petitioner has not abetted the co-accused in committing crime and there is no evidence against her and FIR was originally registered against the Accused No.1 and she was not put questions in respect of abetment during proceedings under Section 313 Cr.P.C. and the petitioner has fair chance of succeed in appeal. However, these are to be decided while deciding the appeal on merits.

8. Further, the citations relied on by the respondent side are rendered in main appeals and this petition is only for limited scope for suspension of sentence pending



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appeal and so, the citations need not be considered at this stage. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain admission in respect of maintaining of the petitioner upon the victim girl. The main accused is the son of this petitioner and the case is still pending against him before the Juvenile Justice Board, Virudhunagar. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is a lady and she is in prison for six months. 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



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surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass

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Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court on all working days at 10.30 a.m., until further orders and if she is not able to appear before the trial Court on any day, she 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 her absence, as directed by the trial Court.

sd/-
16/11/2023

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16/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD
TO
1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON (WOMEN), MADURAI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT

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

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+1 CC to M/s.M.ARUN SRIVASTAVA, Advocate (SR-16367[I] dated 16/11/2023)

ORDER
IN
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IN
CRL A(MD) No.471 of 2023
Date :16/11/2023

SA/SAR. /16.11.2023/9P/6C

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