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

Wednesday, the Second day of August Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.11019 of 2023
in
CRL A(MD)No.268 of 2023

BALAKRISHNAN

... PETITIONER/ APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
IN CRIME NO.19/2021.

... RESPONDENT/RESPONDENT

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 by the learned Special Court for POSCO Act Cases, Virudhunagar District at Srivilliputhur in Spl.S.C.No.01/2022 dated 10.02.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.268 of 2023:

Pleased to call for the records and set aside the judgment and conviction passed in Spl.S.C.No.01 of 2022 dated 10.02.2023 on the file of the Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur and acquit the Appellant herein.

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.S.BASKAR MATHURAM, Advocate for M/S.MATHURAM LAW ASSOCIATES, for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(Crl.side) on behalf of the Respondent, the Court made the following order:-



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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Court for POCSO Act Cases, Srivilliputhur, Virudhunagar District, in Spl.S.C.No.01 of 2022 dated 10.02.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The learned counsel for the petitioner submitted that the medical evidence do not support the case of the prosecution. The prosecution has not chosen to examine the author of the complainant, which would create doubt. Further, there is a delay of 5 days in registering the FIR, however, there was no explanation whatsoever given for the said delay. Hence, the prayer to suspend the sentence.

3. The learned Government Advocate (Criminal Side) appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. Hence, strongly opposed to allow this petition.

4. Heard both sides.

5. This petition has been filed to suspend the sentence imposed on the petitioner as a second time. In earlier occasion, this Court passed a detailed order and dismissed the same in CrI.M.P.(MD).No.5454 of 2023 dated 12.05.2023, which is as follows:



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"2. The case of the prosecution is that on 27.11.2021 when the victim girl, who was aged 15 years, was in her home, the petitioner/accused, who is none other than the victim's father's sister's husband came to the house and after coming to know that no one was there, he hugged the victim girl and squeezed her breast; that on 30.11.2021 at about 04.45 p.m., when the victim girl was returning from her school in cycle, the petitioner/accused stopped her and by dragging her kissed her and squeezed her breast and that on the basis of the complaint lodge, FIR came to be registered in Crime No.19 of 2021 on the file of the respondent police. After completing the investigation, the respondent has laid the final report against the petitioner/accused for the offence under Section 9(n), 9(1) r/w 10 of POCSO Act and under Section 448 of IPC.

3. During the trial, the prosecution has examined 6 witnesses as P.W.1 to P.W.6 and exhibited 9 documents as Ex.P1 to Ex.P9. The defence has exhibited six documents as Ex.D1 to Ex.D6, but adduced no order evidence.

4. The learned trial Judge, upon considering the evidences adduced and on hearing the arguments on both sides, has passed the impugned judgment dated 10.02.2023 convicting the petitioner/accused for the offence under Section 448 IPC and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three

months simple Imprisonment; under Section 10 of POCSO Act and sentenced him to



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undergo seven years rigorous imprisonment and to pay a fine of Rs.7,000/- in default, to undergo six months simple imprisonment and acquitted the other accused. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that the victim girl in her cross examination would say that she was inside the school campus on two occurrence dates upto 05.30 p.m, but, according to the prosecution, two incidents were occurred at 05.00 p.m, on 27.11.2021 and at 04.45 p.m, on 30.11.2021; that the medical evidence do not support the case of the prosecution; that the prosecution has not chosen to examine the author of the complaint and as such the complaint itself is highly doubtful; that the documents produced by the accused would go to show that there existed money transaction dispute between the accused and the defacto complainant's family and that there is a delay of 5 days in registering the FIR, but there was no explanation for the said delay.

6. The learned Government Advocate (Criminal Side) appearing for the State would submit that the trial Court has rightly observed that the evidence of P.W.2 victim girl stood corroborated by the witnesses P.W.1, P.W.3 and P.W.8; that the petitioner has tendered his apology for entering into the defacto complainant's residence while the victim girl was alone;

that though the petitioner being the close relative of the victim girl taking advantage of the



same, has committed the offence and that the trial Court, upon considering the evidence available on records, has rightly convicted the accused.

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7. Considering the above facts and circumstances of the case and also the nature and gravity of the offences allegedly proved and taking note of the fact that the impugned judgment was passed only on 10.02.2023 and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

8. In the result, the Criminal Miscellaneous Petition is dismissed.

6. Hence, this Court does not find any new grounds to suspend the sentence imposed on the petitioner, this Criminal Miscellaneous Petition is dismissed.

sd/-

02/08/2023

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/09/2023

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

SBN

TO

1 THE JUDGE,

SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

ORDER
IN
CRL MP(MD) No.11019 of 2023
in
CRL A(MD)No.268 of 2023
Date :02/08/2023

SS/DD/04/09/2023/6P/5C

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