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

Monday, the Thirty First day of July Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN
CRL MP(MD) No.10056 of 2023

in
CRL A(MD)No.470 of 2023

NARAYANASAMY

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.07 OF 2023)

... 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 Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputhur in Special S.C.No.59 of 2023 on 12.05.2023 and release me on bail pending disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.470 of 2023:

To Call for the records and set aside the conviction and sentence imposed by the Special Court(Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputtur in Special S.C.No.59/2023 on 12.05.2023 and allow this Criminal 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 M/S JOTHI BASU.M, Advocate for the petitioner and of Mr.M.VAIKKAM KARUNANITHI, Government Advocate(Crl.side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence

passed in Spl.S.C.No.59 of 2023, dated 12.05.2023, on the file of the Special Court



(Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputhur, and enlarge the petitioner on bail till the disposal of this Criminal Appeal.

2. According to the prosecution, due to some misunderstanding, the petitioner and his wife living separately. The petitioner used to come to the house of the wife and caused disturbance in drunken mode. On 05.03.2023, at about 11.00 p.m, the petitioner, father of the victim girl, came to the house of the wife and touched the private part of the victim girl in drunken mode.

3. On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.7 of 2023 for the offences under Sections 7 and 8 of Protection of Children from Sexual Offence Act, 2012.

4. The respondent police, after completing the investigation, has laid a final report before the Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputhur, for the offences under Section 10 of Protection of Children from Sexual Offence Act, 2012 and the same was taken on cognizance in Spl.S.C.No.59 of 2023.

5. During the trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7 and exhibited 8 documents as Ex.P.1 to Ex.P.8, whereas, the accused has adduced neither oral nor documentary evidence.

6. The learned trial Judge, upon considering the evidences adduced and on



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hearing the arguments on both the sides, has passed the impugned judgment dated 12.05.2023 and convicting the petitioner/accused for the offence under Section 10 of Protection of Children from Sexual Offence Act, 2012, and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 3 months Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. The learned counsel for the petitioner would 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 as per the evidence of P.W.1, she made attack on the petitioner and caused injuries to him and the same was also admitted by the Investigating Officer. In the said circumstances, the petitioner has been falsely implicated in this case in order to avoid registration of case against her at the hands of the appellant. He would further submit that the prosecution has not produced the statement of the victim girl recorded under Section 164 Cr.P.C. The learned counsel for the petitioner would further submit that P.W.1 stated that she assaulted the petitioner and caused injuries. In order to save from the prosecution for the alleged injuries, she and the victim girl made a false averments in the complaint as if the petitioner touched the private part of the victim girl and the petitioner is in custody from 07.03.2023 onwards. Hence, he



seeks suspension of sentence.

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

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

10. 1. Even as per the prosecution, the petitioner was in drunken mode at the time of occurrence. So, considering the discrepancies projected by the the learned counsel for the petitioner between the evidence of P.W.1/defacto complainant & P.W.4/victim girl and the P.W.1 assaulted the appellant and caused injuries and also considering the period of incarceration, this Court is inclined to grant suspense of sentence.

10.2. Certain contradictions in material particulars and the infirmities brought to the knowledge of this Court by the learned counsel for the petitioner. Apart from that, as per the evidence of P.W.1, she assaulted the petitioner and caused injuries. In order to avoid the legitimate prosecution from the hands of the petitioner, the P.W.1 and P.W.4 made such false allegation. The said submission of the learned counsel for the petitioner is taken into consideration along with other material discrepancies in the prosecution witnesses to consider the suspension of sentence. Further, this Court

prima facie feels that there are arguable points involved in this criminal appeal and



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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.

11. Accordingly, the relief of suspension of sentence 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 Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputhur;

(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 stay at Sivakasi and appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

(iv) The petitioner is hereby directed to not to consume alcohol.

sd/-
31/07/2023

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03/08/2023

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



dss

WITTO COPY

- 1 THE JUDGE, SPECIAL COURT
(PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
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.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-11562[I] dated 01/08/2023)

ORDER
IN

CRL MP(MD) No.10056 of 2023

Date :31/07/2023

SS/03/08/2023/6P/6C

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