



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

Monday, the Twenty Seventh day of March Two Thousand and
Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.10308 of 2022
in
Crl.A. (MD)No.394 of 2022

SUJITHKUMAR @ SONAIMUTHU

... APPELLANT/PETITIONER

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUPARANGUNDRAN,
MADURAI DISTRICT.

... 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 execution of sentence passed in Spl.SC.No.52/2016 on the file of the Honble Sessions Judge(Special Court - POCSO Act Case),Madurai Dt.28/3/2022 and be released on bail on his own bond pending disposal of the instant criminal appeal.

PRAYER IN Crl.A. (MD)No.394 of 2022:

To call for the judgment Spl.S.C.No.52 of 2016 on the file of the Hon'ble Sessions Judge(Special Court-POSCO Act case), Madurai dated 28.03.2022 and set aside the same and acquit the accused from the charge framed against him.

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.KANNAN G, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.side) on behalf of the Respondent the court made the following order:-

RESERVED ON	20.03.2023
PRONOUNCED ON	27.03.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge (Special Court-POCSO Act Cases), Madurai, in Spl.S.C.No.52 of 2016, dated 28.03.2022, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the the petitioner/accused, by giving false promise to marry the victim girl/defacto complainant, who is aged 16 years, had sexual intercourse with her many times and as a consequence, the victim girl was eight months pregnant and on that basis, FIR came to be registered in Crime No.111 of 2013 for the offences under Sections 6 and 10 of Protection of Child from Sexual Offences Act, 2012 and subsequently, the case was altered into Sections 5(1), 5(j)(ii) r/w 6 of Protection of Child from Sexual Offences Act, 2012.

3. The respondent, after completing the investigation, has filed the final report for the offences under Sections 5(1), 5(j)(ii) r/w 6 of Protection of Child from Sexual Offences Act, 2012 as against the petitioner.

4. During trial, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and exhibited 16 documents as Ex.P.1 to Ex.P.16. The accused has examined 1 witness as D.W.1 and exhibited 1 document as Ex.D.1

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 28.03.2022 finding the petitioner guilty for the offences under Sections 5(1), 5(j)(ii), 6 of Protection of Child from Sexual Offences Act, 2012, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 year Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. No doubt, the petitioner's earlier application for suspension of sentence in Crl.M.P.(MD)No.7034 of 2022 in Crl.A.(MD) No.394 of 2022 was ordered to be dismissed by this Court vide order dated 12.07.2022.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.

8. The learned counsel appearing for the petitioner would submit that the trial Court has wrongly concluded that the victim girl, her sister was married with the petitioner and due to the family dispute between the petitioner and the victim girl, the victim girl went to the respondent police station to solve the family dispute, instead, the present case was registered, that the victim girl is the second wife of the petitioner, that the trial Court has failed to consider the fact that the victim girl and the petitioner were living as husband and wife with consent of their parents and the petitioner's first wife, that the trial Judge has



failed to consider that P.W.1 and P.W.2 are hostile witnesses. P.W.1 was denied to go to the medical examination and that the statement of P.W.3 is in contradiction to the complaint filed by the victim girl.

9. The learned counsel appearing for the petitioner would further contend that P.W.3 to P.W.6 did not support the case of the prosecution, that the prosecution has examined the close relative of the victim girl and that the opinion of the Doctor is not always conclusive.

10. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the victim girl was born on 10.03.1997 and she was aged 16 years at the time of the alleged occurrence, that the victim girl in her complaint and her statement had stated that she had studied upto 7th standard and she has been taking care of her ill-health mother, that the petitioner, by giving false promise that he would marry her, had sexual intercourse with her many times and as a result of which, she has become pregnant and that during the course of investigation, the victim girl had given birth to a male child on 05.01.2014.

11. The learned Government Advocate (Criminal Side) appearing for the respondent would further submit that the DNA test report was submitted before the trial Court, which proves that the petitioner is the biological father of the male child of the victim girl, that even though many of the prosecution witnesses had turned hostile as they are close relatives of the petitioner, the trial Court had clearly considered the medical reports, expert opinion and DNA result and has rightly come to the conclusion that the victim was child 16 years of age and she was subjected to continuous penetrative sexual assault and that therefore the prosecution has proved that the petitioner had committed the offences under the POCSO Act.

12. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

13. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-

27/03/2023

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/04/2023

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



TO

1.THE SESSIONS JUDGE (SPECIAL COURT - POCSO ACT CASE) ,MADURAI

2.THE SUPERINTENDENT
CENTRAL PRISON, MADURAI DISTRICT.

3.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUPARANGUNDRAN,
MADURAI DISTRICT.

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

ORDER

IN

Crl.M.P (MD) No.10308 of 2022
in

Crl.A. (MD) No.394 of 2022

Date :27/03/2023

ED/SSS/SAR-1 (03/04/2023) 4P/5C