



CRL MP(MD) No.10559 of 2023

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

Tuesday, the Twenty Fifth day of July Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN
CRL MP(MD) No.10559 of 2023
in
CRL A(MD) No.591 of 2023

MARI SELVAM

... PETITIONER/ APPELLANT/ ACCUSED NO.2

Vs

State Rep.by

THE INSPECTOR OF POLICE

VASUTHEVANALLUR POLICE STATION,

TIRUNELVELI DISTRICT.

CRIME NO.140 OF 2020.

... 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 on the Petitioner/ Appellant/ Accused No.2 in Spl.Case No.7 of 2023 dt.30.6.2023 on the file of the Learned Sessions Judge, Special Court for POCSO Act Cases, Tiruenvleli and enlarge him on bail till the disposal of the appeal.

Prayer in CRL A(MD).591/2023 :

To call for the records relating to the judgment of conviction and sentence passed in Spl Case No.7/2023 dated 30.06.2023 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli and set aside the same against the appellant/accused No.2 and acquit him from the charges leveled against him.

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.VENKATESWARAN R, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Crl.Side) on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

Heard the learned counsel for the petitioner and the learned Government



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Advocate (Crl. Side) appearing for the respondent.

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2. The case of the prosecution is that on 17.04.2023, at about 11.00 a.m., the petitioner along with the other accused took the minor child (P.W.3) to the petitioner's house and also committed aggravated penetrative sexual assault on the child. The child informed the same to her grandmother and her parents. Thereafter, the present has been registered against the accused persons.

3. I have perused the petitioner's affidavit filed in support of the above petition, judgment of the trial Court and the memorandum of the appeal.

4. The petitioner has been convicted by the learned Trial Judge for the offence under Section 294(b) and 506(i) of IPC 11(i), (iii), (iv) r/w. 12 of POCSO Act, 2012 in Spl.Case.No.7 of 2023 dated 30.06.2023 by the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli. For the offence under Section 294(b) of IPC, the petitioner was sentenced to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.2,500/- in default to undergo 1 month rigorous Imprisonment and for the offence under Section 506(i), the petitioner was sentenced to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.7,500/- in default to undergo 3 months rigorous Imprisonment

5. The learned counsel for the petitioner submitted that as per the finding of the trial Court there is no offence is made out against the petitioner under Section 17 r/w



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6 of the POCSO Act and the trial Court suspended the sentence till 27.07.2023, against the petitioner.

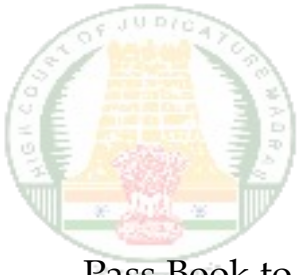
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6. The learned Government Advocate (Crl.side) appearing for the respondent would contend that the Trial Court has rightly convicted the petitioner on the basis of the evidence and the petitioner has no prima facie case in this appeal.

7. Considering the enmity between the victim family and accused family and contradiction between the evidence of P.W.1 and P.W.2 to P.W.4, P.W.6 and P.W.7 and also considering the submissions of the learned counsel for the petitioner and there are arguable points involved in the appeal and that the appeal is not likely to be taken up for final hearing in the near future and also no previous antecedents, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence and accordingly this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal with the following conditions:-

(i) The petitioner shall execute a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties for the likesum each to the satisfaction of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli.

(ii) The sureties shall affix his photographs and Left Thumb Impression in the surety bond and the concerned officer may obtain a copy of their Aadhar or Bank



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Pass Book to ensure their identity.

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(iii) The petitioner shall appear before the Court concerned on the first working day of every English Calender month at 10.30 a.m., until further orders.

sd/-
25/07/2023

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/08/2023

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

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TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES, TIRUNELVELI.

2 THE INSPECTOR OF POLICE, VASUTHEVANALLUR POLICE STATION,
TIRUNELVELI DISTRICT.

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

+1 CC to M/s.R.VENKATESWARAN, Advocate (SR-11201[I] dated 25/07/2023)

ORDER IN
CRL MP(MD) No.10559 of 2023
in
CRL A(MD) No.591 of 2023
Date :25/07/2023

RS/BUC/SAR-(23.08.2023) 4P 5C
Madurai Bench of Madras High Court is issuing
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