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

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

PRESENT

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

CRL MP(MD) No.10860 of 2023

in

CRL A(MD)No.111 of 2023

M.JESURAJ

... PETITIONER/ APPELLANT/ ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR.

CRIME NO. 11 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 execution of the substantial sentence to undergo 6 months Rigorous Imprisonment or the offence punishable under section 342 of IPC and to undergo twenty years Rigorous Imprisonment for the offence punishable under sec.376-AB of IPC passed against the Petitioner/ Appellant in Spl.S.C.No.9 of 2021 dated 24-1-2023 on the file of the Learned Special Judge for Trial of offences under POCSO Act, Virudhunagar District at Srivilliputhur till the disposal of the pending appeal in Crl.A(MD)No.111 of 2023 and release the Petitioner/ Appellant/ Accused on bail.

PRAYER in CRL A(MD)No.111 of 2023:

To set aside the order of conviction and sentence dated 24-01-2023 passed by the learned Special Judge for Trial of offences under POCSO Act, Virudhunagar District at Srivilliputhur in Spl.S.C.No.9 of 2021 for the charges under Sections 342 and 376-AB of the Indian Penal Code, to undergo 6 months Rigorous Imprisonment



and to pay a fine of Rs.1,000/- and in default to undergo 1 month Simple Imprisonment for the offence under section 342 of IPC and to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo 1 year Simple Imprisonment for the offence under section 376-AB of IPC with a direction to suffer concurrently and to set off the period of detention already undergone and allow this Criminal Appeal, acquit the Appellant.

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.MICHAEL BHARATHI M, Advocate for the petitioner and of Mr.R.SIVAKUMAR, 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 imposed on the petitioner herein by judgment dated 24.01.2023 made in Special Sessions Case No.09 of 2021 passed by the learned Special Judge for Trial of offences under POCSO Act, Srivilliputhur, Virudhunagar District till the disposal of the pending Criminal Appeal.

2. The learned counsel appearing for the petitioner submitted that the learned trial Judge has convicted the appellant only on assumption and presumption and not on evidence. Further, the petitioner has not bad antecedent and previous conviction for any offences. The petitioner is in incarceration for more than 5 months from 24.01.2023. Further, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. Therefore, he prayed to suspend the sentence imposed on the petitioner.



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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.2427 of 2023 dated 27.02.2023, which is as follows:

"2. On 16.06.2018, the accused invited the victim girl for drinking coconut water. When she entered into the hotel room, the accused closed the shutter partly, misbehaved with her by touching her private parts and also pressed his private parts in the private parts of the victim. That was also repeated by him, on 16.03.2019 and 22.12.2020. Based upon the continuous occurrence, the case was registered in Crime No.11 of 2020 and final report was also filed before the trial Court, after completing the investigation process for the offences punishable under Sections 342 and 376-AB of IPC.

3. Before the trial Court, on the side of the prosecution, 12 witnesses have been examined, 15 documents were marked. On the side of the accused none was examined and no document was marked.

4. At the conclusion of the trial, the trial Court came to the conclusion that the charges framed against the accused person were proved beyond all reasonable



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doubts and he was convicted for the offence under Section 342 IPC and sentenced him to undergo 6 months rigorous imprisonment and to pay a fine of Rs.1,000/- with default clause; and for the offence under Section 376-AB IPC, sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/- with default clause. The sentence were ordered to run consecutively.

5. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, the petition has been filed seeking suspension of sentence.

6. Heard both sides.

7. Number of contentions have been raised by the petitioner stating that mere allegation of pressing of private parts will not carry the offence under Section 9(m) of POCSO Act. In support of his contention, he would rely upon the judgment of this Court reported in the case of Rajalingam Vs. State, through Inspector of Police, All Women Police Station, Kulithalai, Karur District (2019(2)MWN (cr.) 413 (DB). So according to him, if at all the petitioner can be convicted only under Section 9(n) r/w 10 of the POCSO Act; and no evidence is also supported the case of the prosecution;

The preliminary enquiry was made by some other police station, that was not



brought on record; Even the arrest of the accused found to be falsified, since P.W.2 has stated that the accused was in the police station, at the time of lodging the complaint.

8. Per contra, the learned Additional Public Prosecutor would submit that this is not the first occurrence, but it is a continuous occurrence, which started in 2018 continued till 2020; the age of the victim girl was 12 years, when the above said sexual assault has been made by the petitioner.

9. Records perused. As stated by the Additional Public Prosecutor, this is not the first time, which this petitioner alleged to have misbehaved with the victim girl. It continued for more than once.

10. Whether pressing of the private parts will amount to penetrative sexual assault or not can be considered only at the time of argument in the main appeal. Even we considered this case, on the basis of the above said judgment of this Court relied upon by the petitioner, only the offence under Section 6 of the Act will be attracted. But the gravity occurred in continuous misbehaviour.

11. With regard to the other contention that preliminary enquiry was made by some other police officer and the arrest is also falsifying, are all the matters can be taken into account only at the time of final hearing.



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12. The learned counsel appearing for the petitioner had also produced the synopsis, dates and events and also contradictory portions of the evidence of the witnesses. Those can be considered only at the time of the hearing the main appeal. Now in this suspension petition only limited scope is available.

13. The conduct of the petitioner in repeatedly causing sexual assault upon the victim is sufficient to reject the suspension of sentence. If he is released on bail, by suspending the sentence, there is no guarantee that he will not commit the similar type of offence in future. So on the sole ground, without going into other aspects, this petitioner is liable to be dismissed.

14. In the result, this 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/-

07/08/2023

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/08/2023

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

SBN

TO

1 THE SPECIAL JUDGE

FOR TRIAL OF OFFENCES UNDER POCSO ACT,

VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



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

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

ORDER
IN
CRL MP(MD) No.10860 of 2023
in
CRL A(MD)No.111 of 2023
Date :07/08/2023

SS/JGB/31/08/2023/7P/5C

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