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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.10815 of 2023
in
CRL A(MD)No. 200 of 2023

R.RAMARAJ

... PETITIONER/ APPELLANT/ ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SATTUR,
IN CRIME NO.13/2021.

... 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 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo 3 months Simple Imprisonment for the offence punishable under section 10 of the POCSO Act passed against the Petitioner/ Appellant in Spl.S.C.NO.60 of 2021 dated 09-02-2023 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 CrI.A(MD)No.200 of 2023 and release the Petitioner/ Appellant/ Accused on bail.

PRAYER IN CRL A(MD)No. 200 of 2023:

Pleased to call for records and set aside the order of conviction and sentence dated 09.02.2023 passed by the Learned Special Judge for Trial of offences under POCSO Act, Virudhunagar District at Srivilliputhur in SPL.S.C.NO. 60 of 2021 for the charge under section 10 of the POCSO Act to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo 3 month simple Imprisonment and allow this Criminal Appeal, acquit the Appellant.



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.MICHAEL BHARATHI M, Advocate for the petitioner and of MR.R.SIVAKUAMR, 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 09.02.2023 made in Special Sessions Case No.60 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 09.02.2023. 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.

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.4330 of 2023 dated 12.05.2023, which is as follows:

"2. The case of the prosecution is that the victim child-daughter of the defacto complainant aged about 10 years was studying 5th standard in a school situated in their village, that the victim child used to go to her school and returning home at about 01.00 p.m. for the past 10 days, that the defacto complainant and her husband used to return their home at evening hours, that on 24.08.2021, the defacto complainant did not go to work place as she felt ill-health, that at about 01.30 p.m., the defacto complainant's younger daughter was returning home crying and on enquiry, she informed that when she was returning to her home, the petitioner/sole accused, who was standing nearby the school, asked the victim child to buy a pickle, that when the victim child bought pickle and given to the petitioner and at that time, the petitioner had squeezed her breast and private parts and due to pain, the victim child returned to her house crying and that thereafter, the defacto complainant lodged a



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complaint and on that basis, FIR came to be registered in Crime No.13 of 2021 for the offence under Sections 7 r/w 8 of POCSO Act.

3. The respondent police, after completing the investigation, has laid the final report for the offence under Sections 9(m) r/w 10 of POCSO Act.

4. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The defence has adduced neither oral nor documentary evidence.

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 09.02.2023 convicting the petitioner for the offence under Section 10 of POCSO Act and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 3 months Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present appeal along with the above application for seeking suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that the trial Court

has miserably failed to consider the defence of the petitioner in proper perspective, that the



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impugned judgment is a summary fashion without any discussion, that there are material contradictions in the evidence of prosecution witnesses, that there was a delay of 3 days in lodging the complaint, that there was absolutely no explanation for the same, that the trial Court, by mainly relying on the evidence of P.W.2-victim child and without any corroboration, has come to the decision that the charges levelled against the petitioner were proved, that the petitioner was identified only by child help line 1098, that the petitioner was known prior to the occurrence as stated by the victim child, but the trial Court has failed to marshal the evidence in proper perspective and that the trial Court has failed to consider the grave suspicions, defects and illegalities found in investigation.

7. The learned Additional Public Prosecutor appearing for the respondent would submit that the grounds now raised by the learned counsel appearing for the petitioner are vague and unsustainable, that the respondent police proved the case of the prosecution beyond any reasonable doubt, that the trial Court has rightly held that the date of birth of the victim child is 15.08.2011 and she was aged 10 years 9 months at the time of the alleged occurrence, that the evidence of victim child was corroborated with the evidence of P.W.2, that the evidence of P.W.1 and P.W.2 are reliable and trustworthy and there is absolutely no reason to discard their evidences and that therefore, the learned trial Judge, upon considering the materials available on record, has rightly come to the decision that the charges levelled



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8. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and also the fact that the impugned judgment was passed only on 09.02.2023 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

9. 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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/09/2023
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 SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

<https://www.mhc.tn.gov.in/judis>
3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR



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

ORDER
IN
CRL MP(MD) No.10815 of 2023
in
CRL A(MD)No. 200 of 2023
Date :07/08/2023

SS/DD/04/09/2023/7P/5C

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