



CRL MP(MD) No.15846 of 2023

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

Thursday, the Thirtieth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15846 of 2023

IN

CRL A(MD) No.998 of 2023

PUNNIYAMOORTHY

... PETITIONER/ APPELLANT

Vs

**THE STATE REP BY,
THE INSPECTOR OF POLICE
PERAIYUR POLICE STATION,
MADURAI DISTRICT.**

CRIME NO. 145 OF 2019

... RESPONDENT/COMPLAINANT/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 call for the records relating to the judgment dt. 28.06.2023 made in Spl S.C No. 140 of 2019 on the file of the Principal Special court for POCSO Act cases, Madurai and enlarge the petitioner on bail pending disposal of the above appeal

PRAYER IN CRL A(MD)No. 998 of 2023:

To call for the records relating to the judgment dated 28.06.2023 made in

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) No.15846 of 2023

Spl.S.C.No. 140 of 2019 on the file of the Principal Special Court for POCSO Act Cases, Madurai and set aside the conviction and sentence imposed against the appellant/accused and allow above appeal by acquitting the accused.

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.KUBENDRAN M, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Principal Special Court for POCSO Act Cases, Madurai in Spl.S.C.No.140 of 2019 dated 28.06.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim girl aged about 16 years and she is residing along with her parent at Anaikaraipatti. She has been studying 12th STD and staying in the hostel at Kullursanthai, Virudhunagar District. On 08.07.2019, after vacation in order to go to school, the victim girl left Anaikaraipatti along with her friends namely Rameshwari and Bemina, who belong to the same village and studying with her. While they were travelling on the bus to T.Kallupatti, at the time the petitioner spoke to her through cell phone and threatened her to get down from



CRL MP(MD) No.15846 of 2023

the bus. At the time, at about 4.00 p.m., the petitioner kidnapped the victim girl in his two wheeler bearing Registration No.TN-58-AU-1642 and also from Kallupati to Virudhunagar and also had sexually assaulted her. Based on the complaint F.I.R. was registered in Crime No.145 of 2019 for the offence under Sections 366(A), 506(1) of IPC and Sections 7 and 8 of POCSO Act 2012. After completion of investigation, final report was filed before the Principal Special Court for Exclusive Trial of Cases under POCOSO Act, Madurai and the same was taken on file in Spl.S.C.No.140 of 2019.

3. Before the trial Court, on the side of the prosecution, 16 witnesses have been examined as P.W.1 to P.W.16 and 22 documents were marked as Ex.P1 to Ex.P22. On the defence side, no witness was examined and no exhibit was marked.

4. The learned Trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 28.06.2023 convicting the petitioner for the offence under Section 363 of IPC and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months and for the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offences Act 2012, convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of



CRL MP(MD) No.15846 of 2023

Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months and for the offence under Section 506(ii) of IPC convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months and ordered the sentence of imprisonment to run concurrently. Challenging the above said conviction and sentence, the petitioner preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that and there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses and he prays to allow this petition.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that the sentence of imprisonment passed against the petitioner has been suspended by the trial Court till 08.08.2023. Thereafter, he did not appear before the trial Court and hence the petitioner was arrested on executing Non Bailable Warrant and remanded to judicial custody on 12.09.2023. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by



CRL MP(MD) No.15846 of 2023

either side and also perused the materials available on record.

8. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and 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.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-

(i) The petitioner/ Accused is directed to be enlarged on bail on condition that the petitioner/ Accused 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 Principal Special Court for POCSO Act Cases, Madurai;

(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



CRL MP(MD) No.15846 of 2023

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(iii) The petitioner/ Accused shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders.

sd/-
30/11/2023

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30/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

TO

- 1 THE PRINCIPAL SPECIAL JUDGE
SPECIAL COURT FOR POCSO ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
PERAIYUR POLICE STATION, MADURAI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



CRL MP(MD) No.15846 of 2023

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COPY TO
THE SECTION OFFICER,(CALL FOR RECORDS)
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.15846 of 2023
IN
CRL A(MD) No.998 of 2023
Date :30/11/2023

PKP/30.11.2023/ 7P/ 6C

Madurai Bench of Madras High Court is issuing certified
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