



CRL MP(MD) No.12801 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Tuesday, the Twelfth day of September Two Thousand and Twenty Three
PRESENT

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

CRL MP(MD) No.12801 of 2023
in
CRL A(MD)No.231 of 2023

RANJITHKUMAR

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
PUDUR CIRCLE,
THOOTHUKUDI DISTRICT.
(SANKARALINGAPURAM POLICE STATION
IN CRIME NO.10/2023).

... RESPONDENT/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 Suspend the sentence of Imprisonment imposed by the Learned Sessions Judge, Special court for Exclusive Trial of Cases under POCSO Act, Thoothukudi in Special Sessions Case No. 246 of 2019 by the Judgment dated 09.02.2023 and enlarge the Petitioner/ Appellant on bail, pending disposal of the abovesaid Criminal Appeal.

PRAYER in CRL A(MD)No.231 of 2023:

To call for record and set aside the Judgment and Conviction dated 09.02.2023, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi in Spl.S.C.No.246 of 2019 and 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.SRINIVASARAGAVAN.D, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(Crl.side) on behalf of the Respondent, the Court made the following order:-



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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.246 of 2019 passed by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Thoothukudi, till the disposal of this 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. 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.



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4. Heard both sides.

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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.4827 of 2023 dated 20.06.2023, which is as follows:

2.The case of the prosecution is that on 30.03.2013 at about 09.00p.m. The defacto complainant went to daily wages work and left the victim child in the home; that the petitioner/accused had criminally trespassed into her house and abducted the victim girl from the said house; that the defacto complainant, after returning to her house came to know that the victim girl was missing; that the defacto complainant had then informed the same to her parents and started searching her and that through the information given by the accused to his father, they have located the accused and the victim child available at Salem.

3.It is the further case of the prosecution that on 04.04.2013, the victim child's father and the accused's father went to Salem; that the victim child had narrated the entire incident with respect to the abduction



and sexual intercourse committed by the accused to her father; that the victim girl had informed that while they were staying, the accused was already got married and that the accused forcibly had committed sexual assault with the victim child and that on the basis of the complaint given by the defacto complainant/grandmother of the victim girl, FIR came to be registered in Crime No.10 of 2013 for the offence under Section 366 IPC and Section 4 of POCSO Act and that after completing the investigation, final report came to be filed and the same was taken on file in Spl.S.C.No.246 of 2019.

4.During trial, the prosecution has examined 19 witnesses as P.W.1 to P.W.19; exhibited 11 documents as Ex.P1 to Ex.P11 and marked 8 material objects as M.O.1 to M.O.8. The accused has adduced neither oral nor any documentary evidence.

5.The learned Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the judgment dated 09.02.2023, convicting the petitioner/accused under Section 4 of POCSO Act and sentenced him to undergo 7 years rigorous imprisonment and to



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pay a fine of Rs.10,000/-, in default, rigorous imprisonment for a period of six months. Aggrieved by the conviction judgment, the accused has preferred the present appeal.

6.The learned counsel for the petitioner would mainly contend that though the prosecution has been alleging that the victim girl was aged 15 years, they have miserably failed to prove the age of the victim girl; that the prosecution has neither recovered nor produced the Transfer Certificate or the Birth Certificate of the victim girl before the trial Court and that the trial Court without considering the same, has given a finding that the victim child was aged 15 years at the time of occurrence.

7.The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the prosecution has examined the Headmaster of the School, where the victim child was studying as P.W.14; that the date of birth of the victim child has been shown in the birth certificate as 30.04.1997 and that the evidence adduced by the prosecution is sufficient enough to prove the age of the victim girl. He has also relied on the decision of the Hon'ble Supreme Court in Jarnail Singh Vs. State of



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Haryana reported in (2013) 7 SCC 263, wherein the Hon'ble Supreme Court has considered the matriculation or equivalent certificate of the concerned child, is the highest rated option to determine the age of minor; that in the absence of the said certificate, the date of birth entered in the school records wherein, the victim child had first attended, can be treated a final and conclusive and in the absence of such entry in the school records, the birth certificate issued by a corporation or a municipal authority or a panchayat can be considered.

8.In the case on hand, as already pointed out by the learned Government Advocate (Criminal Side), the trial Court, by considering the evidence of the Headmaster and the also School Certificate under Ex.P.4, has come to a decision that the victim girl has completed 15 years age at the relevant point of time.

9.The learned counsel for the petitioner would further contend that the delay in lodging the FIR has not been properly explained and that the consent given by the victim girl was not at all taken into account by the trial Court.



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10.As rightly contended by the learned Government Advocate (Criminal Side), the above aspects have elaborately been discussed in the impugned judgment and the same are matter for consideration in the main appeal.

11.Considering the seriousness and gravity of the offence allegedly proved and also taking note of the fact that the impugned judgment was pronounced on 09.02.2023 and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

12.In the result, the Criminal Miscellaneous Petition is dismissed.

6. This Court does not find any new grounds to suspend the sentence imposed on the petitioner and accordingly this Criminal Miscellaneous Petition is dismissed.

sd/-
12/09/2023

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/03/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SBN



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TO
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- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, THOOTHUKUDI.
- 2 THE INSPECTOR OF POLICE
PUDUR CIRCLE, THOOTHUKUDI DISTRICT.
(SANKARALINGAPURAM POLICE STATION.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-13492[I] dated
12/09/2023)

ORDER
IN
CRL MP(MD) No.12801 of 2023
in
CRL A(MD)No.231 of 2023
Date :12/09/2023

SS/VR/SAR- /01/03/2024/8P/6C

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