



CRL MP(MD) No.13049 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.13049 of 2023
in
CRL A(MD) No.291 of 2022

SURESHKUMAR

... PETITIONER/ APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT

... 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 imposed by the Learned Special Court for Exclusive Trial of cases under POCSO Act Cases, Virudhunagar District at Srivilliputhur in Spl.S.C.No.51 of 2019 dated 25.03.2022 and enlarge the petitioner on bail, till the disposal of the Criminal Appeal.

Prayer in CRL A(MD).291/2022 :

To call for the records in Spl.S.C.No.51 of 2019 dated 25.03.2022 passed by the Learned Special Court for Exclusive Trial of Cases under POCSO Act Cases, Virudhunagar District at Srivilliputhur and to set aside the same.

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.MAYA PERUMAL.S, 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 petition has been filed to suspend the sentence imposed on the petitioner by the learned Special Court for Exclusive Trial of Cases under POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.51 of 2019, dated 25.03.2022, till the disposal of the 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 no 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.

4. Heard both sides.

5. This petition has been filed to suspend the sentence imposed on the petitioner as a fifth time. In earlier occasion, this Court passed a detailed order and dismissed the same in Crl.M.P.(MD).No.9168 of 2023, dated 05.07.2023, which is as follows:



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"2. The case of the prosecution is that the victim girl was aged 15 years and studying in 10th standard, that on 05.07.2019 at about 03.00 p.m., the petitioner/appellant went to the victim girl's school and informed the victim girl that he would arrange scholarship from MLA fund, for which, photograph has to be fixed in the application, that when the victim girl as well as the headmistress denied for the same, the petitioner approached the second accused, who is working as staff in the said school and she has sent the victim girl along with the first accused at about 03.30 p.m., under compulsion, that the first accused thereafter had taken the victim girl in his two wheeler to Nenmeni Kanmaikarai, Putthur with an intention to commit sexual assault and thereby he touched upon her hip, neck and chest, that he had removed her school uniform dresses and he had taken photographs of the victim girl in a nude manner with his cell phone, that when the victim girl objected the same and raised alarm and tried to run away from the place, he scolded her in filthy language, that thereafter he threatened the victim girl that he will murder her if she disclose the same to anyone, that the petitioner gave her Rs.200/- to purchase footwear and to take passport size photo on the next day, but she refused to receive the money, that thereafter,



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the petitioner had forcibly taken her to school and dropped her and that on the basis of the information furnished by the victim girl, her mother lodged the complaint.

3. On the basis of the complaint lodged by the mother of the victim girl, FIR came to be registered in Crime No.15 of 2019 against the petitioner and one Kala for the offences under Sections 294(b) and 506(1) IPC and Sections 7, 8, 16 and 17 of POCSO Act altered into Sections 7 r/w 8, 13(a), (c) r/w 14(4), 17 of POCSO Act and Sections 366, 294(b) and 506(2) IPC.

4. The respondent police, after completing the investigation, has filed the final report for the offences 363, 294(b) and 506(1) IPC, Sections 7 r/w 8 of POCSO Act, Sections 13(a), (c) r/w 14(4) of POCSO Act and Sections 363 r/w 109 IPC and the case was taken on file in Spl.S.C.No.51 of 2019 and the same was pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputtur.

5. During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 16 documents as Ex.P.1 to Ex.P.16 and marked 2 material objects as M.O.1 and M.O.2, whereas, the accused



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have adduced neither oral nor documentary evidence.

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6. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 25.03.2022 convicting the petitioner for the offences under Section 363 IPC and Sections 8 r/w 7 of POCSO Act and sentenced him to undergo 7 years imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 363 IPC and to undergo 5 years imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment for the offences under Sections 8 r/w 7 of POCSO Act and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the first accused has preferred the present appeal.

7. This is the fourth application filed by the petitioner seeking suspension of sentence. Earlier three applications were ordered to be dismissed, lastly on 07.02.2023.

8. The learned counsel appearing for the petitioner would submit that the evidence of victim girl is riddled with unnaturalness and seemed to be artificial, that the victim girl had admittedly travelled



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along with the petitioner for 2 kms in his bike and she has not raised any alarm nor shown any resistance, that the victim girl in her examination would admit that after getting permission from her class teacher, she had accompanied with the petitioner, that the evidence of P.W.1 and other witnesses are not credible and trustworthy and the same cannot be relied on to convict the petitioner, that the specific overt act alleged against the petitioner would not amount to the offence under Sections 8 r/w 7 of POCSO Act and that the learned trial Judge, without considering the material aspects of the case, has mechanically recorded the conviction.

9. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the learned trial Judge has clearly observed that the victim girl had deposed before the trial Court as well as in the statement recorded under Section 164 Cr.P.C. about the sexual assault committed on her by the petitioner, that the prosecution has produced ample evidence to show that the innocent victim girl had been kidnapped under the false pretext and taken to a remote place and subjected to sexual assault, that the evidence of victim girl stands corroborated by the other evidence and that the learned trial Judge,



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upon considering the entire evidence available on record, has rightly convicted the petitioner.

10. It is pertinent to note that the victim girl was aged 15 years at the time of occurrence.

11. According to the prosecution, the petitioner had taken the victim girl under the false pretext of arranging scholarship from MLA fund and under the guise of taking photographs, he had taken the victim girl from the school and committed the sexual assault.

12. As rightly contended by the learned Government Advocate (Criminal Side), the points/aspects now canvassed by the petitioner's side are matter for consideration in the main appeal.

13. Considering the seriousness and gravity of the offence allegedly proved against the petitioner and also the fact that the impugned judgment was passed on 25.03.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

14. In the result, this Criminal Miscellaneous Petition is dismissed."

6. Hence, this Court does not find any new grounds to suspend the sentence



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imposed on the petitioner, this Criminal Miscellaneous Petition is dismissed.

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12/09/2023

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

SBN

TO

1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

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

3 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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

ORDER IN
CRL MP(MD) No.13049 of 2023
in CRL A(MD) No.291 of 2022
Date :12/09/2023

RS/VRS/SAR-(11.10.2023) 8P 5C
Madurai Bench of Madras High Court is issuing
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