



CRL MP(MD) No.13490 of 2023

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

Wednesday, the Twentieth day of September Two Thousand and Twenty Three

PRESENT

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

CRL MP(MD) No.13490 of 2023
in
CRL A(MD)No.374 of 2023

K.PERIYAKARUPPAN

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
D3-KOODAL PUTHUR POLICE STATION,
MADURAI DISTRICT.
CRIME NO.195 OF 2013.

... 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 Sentence of Imprisonment imposed by the Learned Special Judge, Principal Special Court for exclusive trial of cases under POCSO Act, Madurai in Spl.SC.No.70 of 2017 by the Judgment and conviction dated 21.3.2023 and enlarge the Petitioner/ Accused on bail, pending disposal of the above said Criminal Appeal.

PRAYER in CRL A(MD)No.374 of 2023:

To call for records and set aside the Judgment and Conviction 21.03.2023 by the learned Special Judge, Principal Special Court for exclusive Trial of Cases under POCSO Act, Madurai, in SPL.S.C.No.70 of 2017 and acquit the Appellant.



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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 Mr.RAJA.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:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner herein by judgment dated 21.03.2023 made in Special Sessions Case No.70 of 2017 passed by the learned Special Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai 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. 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.

5. This petition has been filed to suspend the sentence imposed on the petitioner as a third time. In earlier occasions, this Court passed a detailed order and dismissed the same in Crl.M.P.(MD).No.7234 of 2023 dated 23.06.2023, which is as follows:

2. The case of the prosecution is that the petitioner/sole accused took the victim child in his TVS XL bearing Registration No.TN-59-AY-0313 to behind the office of Koodalpudur telephone exchange where there was damaged unused houses, that the petitioner asked the victim child to remove her dresses and committed aggravated penetrative sexual assault, that when the victim child could not bear the pain and shouted out of fear, the petitioner threatened her not to inform to anyone, that thereafter, the petitioner brought the victim child to her house for dropping and then the petitioner has gone out, that the victim child was crying hence, her mother enquired and came to know about the occurrence and that on the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.195 of 2013.



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3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 3, 4, 5 (m) and 6 of POCSO Act, 2012 and Section 506(1) IPC and the case was taken on file in Spl.S.C.No.70 of 2017 and the same was pending on the file of the Principal Special Court for exclusive trial of cases under POCSO Act, Madurai.

4. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 22 documents as Ex.P.1 to Ex.P.22 and marked 1 material object as P.M.O.1. The defence has examined 2 witnesses as D.W.1 and D.W.2.

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 21.03.2023 convicting the petitioner for the offences under Sections 5(m) r/w 6 of POCSO Act, 2012 and Section 506(1) IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Sections 5(m) r/w 6 of POCSO Act, 2012 and to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months



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Simple Imprisonment for the offence under Section 506(1) IPC and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above application for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that there existed dispute between P.W.1 and the petitioner with respect to her husband's passport, which was in the custody of the petitioner, that D.W.1 and D.W.2 have deposed about the same, but the trial Court has not dealt with that issue properly, that there was no recovery of victim child's dress as the incident was allegedly occurred behind the telephone exchange, that the evidence of P.W.1 was not corroborated by the other witnesses, that there is no evidence for proving the alleged occurrence except the evidence of P.W.2-victim child, that the evidence of minor cannot be accepted when her evidence was not corroborated with other evidence and that the trial Court, without considering the above material aspects, had recorded the conviction.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the custody of the passport with the petitioner was



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utilized for taking vague defence, but the petitioner has miserably failed to prove the said defence, that P.W.1-mother of the victim child informed the incident to P.W.4 and after the arrival of P.W.4 they met the elders and lodged the complaint before the respondent police, that the trial Court itself has rightly opined that P.W.1 rightly waited for arrival of her husband for lodging the complaint, that the evidence of the victim child as well as the other circumstantial evidence are unimpeachable and inspires the confidence of the Court and that the trial Court, upon considering the evidence available on record, has rightly convicted the petitioner.

8. As rightly contended by the learned Government Advocate (Criminal Side), the points and the aspects now canvassed by the learned counsel appearing for the petitioner are matter for consideration in the main appeal.

9. It is pertinent to note that the impugned judgment was passed only on 21.03.2023.

10. According to the prosecution case, the victim child was aged only 9 years at the time of alleged occurrence.



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11. Considering the above facts and circumstances and also the seriousness and gravity of the offence allegedly proved against the petitioner and taking note of the age of the victim child and also the fact that the impugned judgment was passed on 21.03.2023 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

Subsequently, the petitioner herein filed another petitioner in Crl.M.P.(MD). No.10146 of 2023 in Crl.A.(MD).No.374 of 2023, to suspend the sentence. The same also dismissed on 17.07.2023, which reads as under:

2.The learned counsel for the petitioner would submit that this is the second suspension of sentence petition. The earlier petition filed in Crl.M.P.(MD).No.7234 of 2023 in Crl.A.(MD).No.374 of 2023 was dismissed by this Court, on 23.06.2023.

3. Considering the facts and circumstances of the case, this Court concurred with the reasons assigned in Crl.M.P.(MD).No.7234 of 2023 dated 23.06.2023 and



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does not find any new ground to entertain this petition. Hence, this Criminal

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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/-

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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, MADURAI.
- 2 THE INSPECTOR OF POLICE
D3-KOODAL PUTHUR POLICE STATION,
MADURAI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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ORDER

IN

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in

CRL A(MD)No.374 of 2023

Date :20/09/2023

SS/MGA/06/10/2023/9P/5C

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