



CRL MP(MD) No.13479 of 2023

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

Wednesday, the Twenty Second day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.13479 of 2023

IN

CRL A(MD) No.864 of 2023

B.PRAVINKUMAR ... PETITIONER/ APPELLANT/ SOLE ACCUSED

Vs

**THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KUMBAKONAM,
THANJAVUR DISTRICT.**

CRIME NO. 13 OF 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 sentence made in S.C No. 52 of 2021 on the file of the Principal Special court for Exclusive trial of cases under POCSO Act, Thanjavur dated 10.05.2023 and enlarge petitioner on bail pending disposal of the above appeal on the file of this Hon'ble Court.

PRAYER IN CRL.A(MD).864/2023:

To call for the records related to the Special Sessions Case No.52 of 2021 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and set aside the judgment dated 10.05.2023 and acquit the appellant/accused of all charges.

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

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



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M/S.VISHNU. R.VENKATARAMAN, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 02.11.2023

Pronounced on : 22.11.2023

The petitioner has filed this petition to suspend the sentence made in Spl.S.C.No.52 of 2021 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur dated 10.05.2023 and to enlarge him on bail till the disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The victim girl is the defacto complaint who was studying 12th STD at the time of occurrence. The accused is residing opposite to the residence of victim girl and he is distant relative. The accused used to follow the victim girl saying love affairs, but the victim refused his love proposal. On 01.05.2021, with sexual intent the accused called the victim girl to his house. As the accused is a distant relative she went to his house. The accused had taken the victim girl to his upstairs and committed aggravated penetrative sexual assault upon her and under threat she called her often and had sexual assault repeatedly and thereby the victim girl became pregnant. In July 2021, the victim was dianogized pregnant, the victim girl narrated her mother P.W.2 about the sexual assault of the accused under threat and on 23.07.2021 she lodged criminal complaint before the AWPS, Kumbakonam against the accused. FIR



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was registered in Cr.No.13 of 2021 under Sections 5(l), 5(j)(ii), 6, 11(iv), 12 of POCSO Act and 506(i) IPC against the petitioner. P.W.16 and P.W.17 Inspector of Police did investigation and P.W.17 laid charge sheet against the petitioner. The petitioner was charged for the offences under sections 5(n) r/w 6 and 5(j)(ii) r/w 6 of POCSO Act.

(i) To prove the charge the prosecution examined 17 witnesses as P.W.1 to P.W.17 and marked 12 exhibits as Ex.P1 to Ex.P12. On the defence side no witness was examined and no exhibit was marked. Court exhibits Ex.X.1 and Ex.X.2 were marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty under Section 5(n) r/w 6 and 5(j)(ii) r/w 6 of POCSO Act and convicted and sentenced him to undergo 25 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for a period of one year by passing impugned judgment dated 10.05.2023.

3. Aggrieved by the conviction judgment, the accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the appeal.

4. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

5. The learned counsel for the petitioner has submitted that the victim is 17



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years old and she also had love affairs with the petitioner. The alleged occurrence took place on 01.05.2021 and the complaint was lodged after lapse of 84 days. The victim was silent for 84 days. Actually both the family of petitioner and victim are distant relatives and due to motive between the two families the petitioner was falsely implicated in this case. The victim was not subjected to DNA Test to prove the prosecution case that the victim was pregnant. P.W.10 - Doctor examined the victim, who stated that two months back she had sexual contact with known person without her consent, but the doctor found fetus with growth 10 weeks 3 days embryo fetus. The Trial Court has also observed that the investigation was conducted in a lethargic way and the trial court concluded only based on the evidence of the victim girl. The petitioner is college going student and he is going to attend 5th semester examination. The petitioner is in prison for 176 days nearly six months. The petitioner has fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Additional Public would submit that the victim girl was aged 17 years and she clearly deposed about offences committed by the petitioner, who proposed love affairs with her, but she refused. Taking advantage of distant relation, on the occurrence day the petitioner called the victim girl to his house and took her to upstairs and had penetrative sexual assault on her and



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threatened her to do away if she would disclose. The Hon'ble Supreme Court held in (2022) 2 SCC 74 that 'if the testimony of prosecutrix is found to be reliable by itself may be sufficient to convict the culprit and no corroboration of her evidence is necessary.' In this case the victim as PW1 clearly deposed about commission of crime by the petitioner, and hence, the trial Court has correctly appreciated her evidence. Since the fetus aborted, the victim girl was not subjected to DNA test. Not taking of DNA test would not be fatal to the prosecution case because other material evidence is corroborative and the same against the petitioner. Doctor evidence is clear about the sexual assault. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. The petitioner is awarded sentence of imprisonment to 25 years and he is in prison only for 176 days. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail and relied on the decision reported in Crl.A.No.1633 of 2023 of this Court and (2022) SCC Online Bom 3388.

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. The petitioner stated that he is college going student and both the petitioner and victim girl are distant relative and due to family dispute the petitioner was foisted with this case. On perusal of records and judgement of the trial Court, it is clear that the



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evidence of the victim girl as P.W.1, was cogent and does not suffer from any infirmity. The Trial court came to a conclusion based on the evidence of P.W.1 along with other witnesses which clearly corroborated with each other. The victim girl evidence cannot be rejected in toto as a false one. P.W.10, who is the Doctor, examined the victim and he stated that the victim was subjected to sexual assault. The contention of the learned counsel for the petitioner that the victim was not subjected to DNA test and the investigation was lethargic is a matter for consideration in the appeal. The petitioner is in jail for short period from 10.05.2023 after passing the impugned judgment.

8. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, this Court is not inclined to suspend the sentence at this stage and if he is released on bail, there is a possibility of making trouble to the victim girl in future and also this is not a fit case to exercise the jurisdiction of suspension of sentence.

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

sd/-
22/11/2023

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



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VSD
TO
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1 THE JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE TRIAL
OF CASES UNDER POCSO ACT, THANJAVUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KUMBAKONAM,
THANJAVUR DISTRICT.

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

+1 CC to M/s.VISHNU.R.VENKATRAMAN, Advocate (SR-16824[I] dated
24/11/2023)

ORDER
IN
CRL MP(MD) No.13479 of 2023
IN
CRL A(MD) No.864 of 2023
Date :22/11/2023

SA/JGB/SAR. /24.11.2023/7P/6C

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