



CRL MP(MD) No.13657 of 2023

WEB COPY

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

Friday, the Fifteenth day of December Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI
CRL MP(MD) No.13657 of 2023
in
CRL A(MD) No.163 of 2023

ASIR SUDHAHARRAJ

... PETITIONER/PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THALLAKULAM,
MADURAI CITY,
MADURAI.

CRIME NO. 10 OF 2020.

... RESPONDENT/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 on the Petitioner/Appellant in Spl.SC.No.18 of 2020 on the file of the Court of Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai and enlarge him on bail pending disposal of the instant Criminal Appeal.

Prayer in CRL A(MD).163/2023 :

To admit this appeal and call for the records pertaining to Special Sessions Case No.18/2020 dated 30.01.2023 on the file of the Court of Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai.

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.K.SAMIDURAI, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-



WEB COPY



CRL MP(MD) No.13657 of 2023

Reserved on : 30.11.2023

Pronounced on : 15.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him in Special S.C.No.18 of 2020 on the file of the Sessions Judge, Principal Special Court for Exclusive trial of cases under POCSO Act, Madurai dated 30.01.2023 and enlarge him on bail pending disposal of the Criminal Appeal.

2. The brief facts of the prosecution case:

The petitioner is working as an Office Assistant in American College Higher Secondary School, Tallakulam, Madurai. The victim boy was studying 10th STD in that school at the time of occurrence. On 02.03.2020 the victim boy went to the office of the school to take a chalk piece and at that time the accused misbehaved with the victim boy, removed the dress of the boy and pressed the private part with sexual intention. On the night the victim boy consumed sleeping tablets and the next day morning he was admitted in the hospital and narrated the occurrence to his mother P.W.1. The mother of the victim boy lodged a police complaint before the respondent All Women Police Station, Thallakulam. The respondent police registered the FIR in Crime No.10 of 2020 for the offence under Sections 9(f),(l) r/w 10 of POCSO Act and 506 (i) of IPC. P.W.23 - Inspector of Police did investigation and laid a charge sheet.

The petitioner was charged for the offence under Sections 9(f), 9 (1) r/w 10 of POCSO



CRL MP(MD) No.13657 of 2023

Act and Section 506 (i) of IPC.

WEB COPY

3. To prove the charge the prosecution examined 13 witnesses as P.W.1 to P.W.13 and marked 13 exhibits as Ex.P1 to Ex.P3. The petitioner/accused has examined himself as D.W.1 and marked Ex.D.1 and Ex.D.2. Ex.C.1 was also marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under sections 9(f), 9(1) r/w 10 of POCSO Act and Section 506(i) of IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year and for the offence under Section 9(f), 9(1) r/w 10 of POCSO Act and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of three months for the offence under Section 506(i) of IPC and directing the sentences to run concurrently by passing the impugned judgment dated 30.01.2023.

4. 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 pending disposal of appeal.

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



CRL MP(MD) No.13657 of 2023

WEB COPY

6. The learned counsel for the petitioner has submitted that this is the second petition and already the petitioner filed CrI.M.P.(MD) No.4606 of 2023 and the same was dismissed on 17.04.2023 considering a short period of incarceration. The petitioner was working as Office Assistant in American College Higher Secondary School. The victim boy was aged 15 years, who was studying that school. In fact, there was two groups of Office Assistants, the opposite rival group managed the parents of the victim boy to lodge this false case against the petitioner. P.W.1 - mother of victim, deposed that she went in person to the police station on 03.03.2020 at about 3.00 p.m, but P.W.11 - The Sub Inspector of Police registered the FIR on 03.03.2020 at 2.30 p.m. P.W.10 - The Head Mistress of the School deposed that when there was farewell party for one teacher, the police came and arrested the accused at 11.30 a.m. There is doubt even in the origin of the prosecution case. Moreover, the alleged occurrence day is a school holiday, the victim boy could not come to the school. The police did not seize the CCTV footage and produced in this case. As per FIR, the accused touched the private part of the victim boy, but the accused charged by the police is entirely different. The Trial Court has not considered all these aspects has misconstrued the settled propositions of law and convicted the petitioner. The petitioner has a fair chance of succeed in the appeal. The petitioner, who is aged 61 years and is suffering from ophthalmological and hypertension with Ischemic Heart



CRL MP(MD) No.13657 of 2023

WEB COPY

disease issues, is in prison for more than one year. The petitioner has family and to maintain his family. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent has contended that the Trial Judge has elaborately discussed the contentions of the petitioner along with the oral and documentary evidence adduced by the prosecution and convicted the accused. The victim boy / PW.2 clearly deposed against the petitioner, who committed sexual assault on him. There is no necessity for the mother of the victim to lodge a complaint against the petitioner since there was no motive between P.W.1 and the petitioner. Moreover, the victim boy narrated the incidents to P.W.9 – doctor, who also deposed corroborating the evidence of the victim boy. There was no CCTV in the school as deposed by P.W.10. Further, the victim boy gave a statement under Section 164 of Cr.P.C. The earlier petition was dismissed by this Court on 17.04.2023. The period of incarceration is immaterial. The gravity of the offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

8. In reply, the learned counsel for the petitioner submitted that in a life sentence case, considering the contention raised by the petitioner and considering the



CRL MP(MD) No.13657 of 2023

WEB COPY

incarceration period, the Hon'ble High Court of Madras suspended the sentence and enlarged the appellant on bail in Crl.M.P.No.3911 of 2021 in Crl.A.No.140 of 2021, dated 15.06.2021 and produced copy of the same.

9. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner and the victim boy P.W.2 were in the same school. The petitioner's main contention is that the occurrence took place on 02.03.2020, which is stated to be a school holiday by the petitioner and this was not explained by the prosecution. The petitioner further contends that he was falsely implicated in this case by the rival group of employees. He further contends that there are contradictions in the FIR and arrest of the petitioner. However, these are to be decided while deciding the appeal on merits. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case. The fact remains that there are arguable points involved in this criminal appeal as stated supra and further the criminal appeal is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison for nearly one year. The order of this Court submitted by the petitioner is also considered. The petitioner says that he is suffering from hypertension and its related disease and produced copy of medical prescriptions. In the above circumstances, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of



CRL MP(MD) No.13657 of 2023

grant of suspension of sentence.

WEB COPY

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

(i) The petitioner 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 learned Sessions Judge, Principal Special Court for Exclusive trial of cases under POCSO Act, 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

(iii) The petitioner shall appear before the concerned Trial Court on all first working day of every week at 10.30 a.m., until further orders.

sd/-
15/12/2023

/ TRUE COPY /

15/12/2023

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

VSD



CRL MP(MD) No.13657 of 2023

TO

WEB COPY

1 THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER POCSO ACT,
MADURAI.

2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
THALLAKULAM, MADURAI CITY, MADURAI.

3 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-17858[I] dated 15/12/2023)

ORDER IN
CRL MP(MD) No.13657 of 2023
in CRL A(MD) No.163 of 2023
Date :15/12/2023

RS//SAR-(15.12.2023) 8P 6C
Madurai Bench of Madras High Court is issuing
certified copies in this format from 17/07/2023