



CRL MP(MD) No.14347 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the Twentieth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.14347 of 2023

in

CRL A(MD) No.921 of 2023

BHARATH @ BHARATHKUMAR ... Petitioner / Appellant / Accused No.1

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALANI,
DINDIGUL DISTRICT.
(CRIME NO.09 OF 2020)

... 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 execution of the sentence on petitioner by the Judgment of conviction and sentence passed in Spl S.C No. 28 of 2023 dated 13.06.2023 passed by the Learned Special court for POCSO Act, Dindigul and to release the petitioner on bail pending disposal of the grounds of Criminal Appeal.



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Prayer in CRL A(MD). 921/ 2023 :

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To call for the records in Spl.S.C.No.28 of 2023 dated 13.06.2023 passed on the file of Learned Special Court for POCSO Act at Dindigul 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.RAMASIVA.S.M, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, while admitting the criminal appeal, the court made the following order:-

Reserved on : 11.10.2023

Delivered on : 20.10.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Special Court for POCSO Act, Dindigul, in S.C.No.28 of 2023, dated 13.06.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 06.06.2020, at about 12.00 p.m, the victim girl had gone to fetch water from the street Municipality water tap, thereafter, the victim had gone for open defecation near to the Kalvettankuli and when the victim was returning back to her home, both the accused had followed the said victim and the first accused had hugged the victim from back side of her body, when the victim shouted, the second accused with his hands closed the victim's mouth and slapped the victim in her chin. After seeing the victim's mother and



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sister, both the accused persons went away from the occurrence place. Thereby, both the accused committed an offence punishable under Section 10 of POCSO Act.

3. The respondent police, after completing the investigation, has filed the final report for the offence 10 of POCSO Act. The case was taken on file in Spl.S.C.No.28 of 2023 on the file of the learned Special Court for POCSO Act, Dindigul and charge was framed against the petitioner and other accused under Section 10 of POCSO Act.

4. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and exhibited 15 documents as Ex.P.1 to Ex.P.15. On the side of the accused no witness was examined and no documents were exhibited.

5. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 13.06.2023 finding that both the accused guilty for the offence under Section 10 of POCSO Act and sentenced both the accused to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo three months Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner/Accused No.1 has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.



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6. The learned counsel appearing for the petitioner/Accused No.1 would submit that the trial Court failed to consider that the statement recorded before the Investigating Officer and before the Court, since witnesses gave different statement before the Investigating Officer and the Court. The victim girl and the witness No.4 gave contradict statement to each other. Therefore, the prosecution case remains untrue. He further submitted that the Doctor, who examined the victim girl has stated that she has not sustained any injury in her private part. He further submitted that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses and the petitioner is in custody from 13.06.2023 and hence, he seeks to allow this petition.

7. The learned Additional Public Prosecutor appearing for the respondent police would submit that there are enough materials available on record against the petitioner and there is no infirmities in the prosecution case and the victim girl is the minor and the petitioner is aged about 27 years. He further submitted that the petitioner misbehaved with the victim girl, when the victim girl shouted, the second accused with his hands closed the victim's mouth and slapped the victim in her chin. Hence, he strongly opposed to grant suspension of sentence.

8. This Court has carefully considered the rival contentions put forward by



either side and also perused the materials available on record.

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9. The learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

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

(i) The petitioner/ Accused No.1 is directed to be enlarged on bail on condition that 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 learned Special Court for POCSO Act, Dindigul.

(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



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

sd/-
20/10/2023

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20/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TTA

To

1.The Special for POCSO Act,
Dindigul.

2.The Inspector of Police,
All Women Police Station,
Palani, Dindigul District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (Call for records)



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+1 CC to M/s.SM.RAMASIVA, Advocate (SR-15568[I] dated 20/10/2023)

ORDER
IN
CRL MP(MD) No.14347 of 2023
in
CRL A(MD) No.921 of 2023
Date :20/10/2023

ED/ /SAR- (20/10/2023) 7P / 7C

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