



CRL MP(MD) No.14478 of 2023

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

Friday, the Twenty Second day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.VADAMALAI

CRL MP(MD) No.14478 of 2023

IN

CRL A(MD) No.930 of 2023

RAJAMOHAMMED

... PETITIONER/ APPELLANT/
SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
MADURAI TOWN,
MADURIA DISTRICT.
CRIME NO.06/2019.

... 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 Sentences of imprisonment passed in the Judgment of conviction and sentence in Special S.C No.4/2020 on the file of the Learned Sessions Judge, Special Court for POCSO Act cases, Madurai dt.05.08.2022 and enlarge the petitioner on Bail pending disposal of the main Criminal Appeal.

PRAYER IN CRL.A(MD).930/2023:

Pleased to call for the records pertaining to the Judgment of conviction and sentences passed in Spl.S.C.No.4 of 2020 dated 05.08.2022 on the file of the Learned Sessions Judge, Special Court for POCSO Act Cases, Madurai and set-aside the same as illegal and acquit the Appellant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.RAJA

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



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MOHAMED.B.N, 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 : 28.11.2023

Pronounced on : 22.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him and enlarge him on bail pending disposal of the criminal appeal against the judgment of the learned Sessions Judge, Special Court for POCSO Act Cases, Madurai in Spl.S.C.No.4 of 2020 dated 05.08.2022.

2.The brief facts of the prosecution case:

The petitioner/accused is running KR Dresses Readymade company in his residence. The mother/PW1 of the victim girl was working that company. The mother/PW1 has two children the victim girl and a son Pandimadan. The victim girl was studying 7th standard at the time of occurrence and during school holidays the mother of victim girl used to take their children to the company. On 08.09.2019 the mother/PW1 took their children to that working place. At 4.00 p.m the victim girl after intimating her mother went to bathroom situated near kitchen of that company. The petitioner, who was sitting near the kitchen, called the victim girl and removed her dress and touched her private part and inserted his fingers and also touched her chest and thereby committed sexual assault on her and while she cried, the petitioner



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criminally intimidated. The victim girl narrated the sexual assault of the petitioner to her mother. The mother of the victim child lodged a complaint before the All Women Police Station, Madurai Town against the petitioner/accused. FIR was registered in Cr.No.06 of 2019 under Section 3(b) r/w 4 of POCSO Act and Section 506(i) of IPC against the petitioner. P.W.9 - The Inspector of Police did investigation and laid charge sheet against the petitioner for the offence under Section 3(b) and 4 of POCSO Act and 506(i) of IPC. The petitioner was charged by the trial Court for the offences under Sections 5(m) r/w 6 of POCSO Act and Section 506(i) of IPC.

3. To prove the charge the prosecution examined 9 witnesses as P.W.1 to P.W.9 and marked 14 exhibits as Ex.P1 to Ex.P14. On the defence side, no witness was examined and no exhibit was marked. No M.O was marked on both side. One Court document was marked as Ex.C1. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 5(m) r/w 6 of POCSO Act and convicted and sentenced him to undergo imprisonment for a period of 20 years and to pay a fine of Rs.5,000/- and to pay Rs.50,000/- as compensation, in default, to undergo simple imprisonment for a period of one year and for the offence under Section 506(i) of IPC convicted and sentenced to undergo imprisonment for a period of one year and to pay Rs.1000/-, in default, to undergo, simple imprisonment for a period of 3 months by passing



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impugned judgment dated 05.08.2022.

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4. Aggrieved by the conviction judgment, the petitioner/accused has preferred the present criminal appeal before this court. Along with appeal, the petitioner/accused has filed this petition seeking for suspension of sentence and for bail pending disposal of the appeal.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. The learned counsel for the petitioner has submitted that the trial Court altered the charge and framed the altered charge, for which no opportunity was given to the petitioner. There was a motive between the mother of the victim and the petitioner regarding money transactions and also the petitioner disclosed the character of the mother of the victim. In fact, the victim girl was slipped near the occurrence place and the petitioner rescued her. But, because of previous money motive, the mother of the victim lodged a false case. Moreover, the son of the PW1 was not examined. As per medical evidence, there was no injury to the victim and hymen was intact. The Trial Court has not considered their evidences. The petitioner is aged person and is in prison for one year and he has not committed any offence as alleged. The petitioner has a fair chance in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. In



support of his argument, he relied on the citation reported in 2023-1 Law Weekly (CrI.) 758.

7. Per contra, the learned Additional Public Prosecutor would submit that the defacto complainant is the mother of the victim girl lodged a complaint. The victim girl was 12 years old at the time of occurrence and she has clearly deposed identifying the accused and offence committed by him. It is settled proposition of law, victim girl's evidence need not be corroborated. The petitioner is known person to victim as she was taken by her mother during school holidays. Doctor evidence is clear about the sexual assault with whom the victim narrated the happenings. The Trial Court has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. The petitioner was awarded sentence of imprisonment to 20 years and he is in prison only for one year. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

8. 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 has not committed any offence. Only he took defence money motive and he rescued the victim girl who slipped at bathroom. PW.3 is the third person who eye witnessed and deposed against the petitioner. No other reasoned



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grounds raised for suspension of sentence. As argued by the learned Additional Public Prosecutor, in this nature of offence victim girl's evidence is sufficient. On perusal of records and judgment of the trial Court, it is clear that the evidence of the defacto complainant and the victim girl as P.W.1 and P.W.2 was cogent and does not suffer from any infirmity. PW3 deposed and supported the evidence of P.W.1 and P.W.2.

9. The contention of the learned counsel for the petitioner raised in this petition is a matter for consideration in the appeal. The petitioner is in jail for a short period from the date of judgment against total period of sentence of 20 years. 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 suspense of sentence.

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

sd/-
22/12/2023

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/01/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
MADURAI TOWN,
MADURIA DISTRICT.

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

ORDER
IN

CRL MP(MD) No.14478 of 2023

Date :22/12/2023

SA/VR/SAR. /05.01.2024/7P/5C

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