



CRL MP(MD) No.14164 of 2023

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

Friday, the Thirteenth day of October Two Thousand and Twenty Three  
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI  
CRL MP(MD) No.14164 of 2023  
in  
CRL A(MD) No.466 of 2023

GANESH KUMAR

... APPELLANT/SOLE ACCUSED

Vs

State Rep.by  
THE INSPECTOR OF POLICE  
RAILWAY POLICE STATION,  
KARUR.

... 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 imposed against the petitioner in Spl.SC.No.11/2023 dt.09/5/2023 passed by the Learned Additional Sessions Judge (Fast Track Mahila Court), Karur and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL A(MD).466/2023 :

To call for the records in Spl.S.C.No.11 of 2023 dated 09.05.2023 passed by the Learned Additional Sessions Judge (Fast Track Mahila Court), Karur 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.KARUPPASAMY PANDIYAN G, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor 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 by the learned Sessions Judge(Fast Track Mahila Court),

Karur, in Spl.S.C.No.11 of 2023, dated 09.05.2023, till the disposal of this Criminal



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Appeal.<sup>5</sup>

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2. The case of the prosecution is that on 03.02.2023, at about 09.30 hours, the defacto complainant boarded at Ernakulam Express Train along with her family members and travelled in an unreserved Compartment. She made her two daughters to lay on a separate seat in the said Compartment and her husband, namely, Mohankumar lay in the floor of the Train Compartment, since there was no rush in the train. She has seated in a single seat situated opposite to the main cubae. On 04.02.2023, at about 5.45 hours, when the train crossed Kodumudi, the accused who sat near the victim girl has inserted his hand into the bed sheet of the victim girl, aged about 6 years and touched her private part and thereby, the accused committed an offence punishable under Sections 9(m) & 10 of POCSO Act, 2012.

3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 9(m) & 10 of POCSO Act, 2012 Act. The case was taken on file in Spl.S.C.No.11 of 2023 on the file of the learned Sessions Judge (Fast Track Mahila Court), Karur and charge was framed against the petitioner under Section 10 of the POCSO Act.

4. During trial, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and exhibited 13 documents as Ex.P.1 to Ex.P.13. On the side of the accused one witness was examined as D.W.1 and no documents were exhibited.



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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 09.05.2023 finding the petitioner guilty for the offence under Section 10 of POCSO Act and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo six months Simple Imprisonment. Challenging the above said conviction and sentence, the accused has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that the trial Court failed to consider the foundational facts of the prosecution case, which runs diametrically opposite to the evidence of the victim girl. The victim girl very firmly stated that the petitioner had touched her leg. Therefore, the prosecution case remains untrue. 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 the date of occurrence (i.e) on 04.02.2023 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 case of the



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prosecution is well founded and P.W.4/Tmt. Baby, who is the eye witness and the independent witness, has deposed the whole occurrence clearly and cogently. 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.

9. As rightly pointed out by the learned Additional Public Prosecutor appearing for the respondent police apart from the evidence of victim girl/P.W.2, the evidence of P.W.1 and P.W.3 are corroborating. Further P.W.4 is the independent eye witness, who travelled in the said compartment, directly noticed the said occurrence and she has clearly deposed the entire occurrence.

10. Considering the facts and the circumstance of this case and also the gravity of the offence and the manner in which, the offence was committed by the petitioner, I find that such nature of person is not at all entitled for the relief of suspension of sentence at this stage.

11. Hence this Criminal Miscellaneous Petition is dismissed.

sd/-

13/10/2023

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/10/2023

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



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TO செய்து அளித்தல்

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1 THE ADDITIONAL SESSIONS JUDGE (FAST TRACK MAHILA COURT), KARUR.

2 THE INSPECTOR OF POLICE, RAILWAY POLICE STATION, KARUR.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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

ORDER IN  
CRL MP(MD) No.14164 of 2023  
in  
CRL A(MD) No.466 of 2023  
Date :13/10/2023

RS/VRS/SAR-(17.10.2023) 5P 5C

Madurai Bench of Madras High Court is issuing  
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