



CRL MP(MD) No.15359 of 2023

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

Friday, the Tenth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15359 of 2023

IN

CRL A(MD) No.970 of 2023

SANKARGANESH

... PETITIONER/ APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
AMBASAMUDRAM,
TIRUNELVELI DISTRICT.
(IN CRIME NO.3/2020).

... RESPONDENTS/RESPONDENTS

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 sentence of imprisonment passed in the Judgment of conviction and sentence in SC.No.27/2021 dt.28/6/2023 on the file of the learned Special Court for POCSO Act Cases, Tirunelveli and enlarge me on bail pending disposal of the main Criminal Appeal.

PRAYER IN CRL A(MD) No.970 of 2023:

To call for the records pertaining to the order passed by the learned Special Court for POCSO Act Cases, Tirunelveli in Spl Case No.27 of 2021 dated 28.06.2023 and set-aside the same as illegal.



CRL MP(MD) No.15359 of 2023

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.MANDHIRALINGESWARAN.S, Advocate for the petitioner and of MR.E.ANTONY SAHAYA PRABAHAR, Additional Public Prosecutor on behalf of the Respondent, while admitting the Criminal Appeal on 03.11.2023, the court made the following order on 10.11.2023:-

Reserved on : 03.11.2023

Pronounced on : 10.11.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Special Court for POCSO Act Cases, Tirunelveli, in Special Case. No.27 of 2021, dated 28.06.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the defacto complainant's fourth daughter was working in the slipper shop and the petitioner was working as the driver in the mini bus. While so, on 11.02.2020, when the defacto complainant's daughter went to the home in the petitioner's bus, the petitioner kidnapped the victim girl and also misbehaved with her. Thereby, the accused committed an offence punishable under Sections 417 and 360(A) of Indian Penal Code.



CRL MP(MD) No.15359 of 2023

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3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 417, 366 (A) of IPC and Section 18 of the Protection of Children from Sexual Offences Act, against the petitioner. The case was taken on file in Spl.S.C.No.27 of 2021 on the file of the learned Special Court for POCSO Act Cases, Tirunelveli,

4. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and exhibited 27 documents as Ex.P.1 to Ex.P.27. 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 28.06.2023 finding the petitioner guilty for the offence under Section 366 of IPC and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- (Rupees one Thousand only), in default, to undergo six months Simple Imprisonment and he was acquitted from the charges under Sections 417 of IPC and Section 18 of the Protection of Children from Sexual Offences Act. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition

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



CRL MP(MD) No.15359 of 2023

seeking suspension of sentence.

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6. The learned counsel appearing for the petitioner would submit that the victim girl in her statement stated that there was no any physical relationship between the petitioner and her, during that period. 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 28.06.2023 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 is aged about 17 years and the petitioner is aged about 24 years at the time of occurrence. He further submitted that the petitioner kidnapped the defacto complainant's daughter and also had a physical relationship with her. Hence, he strongly opposed to grant suspension of sentence.



CRL MP(MD) No.15359 of 2023

8. 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 and also considering the period of incarceration, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. 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 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 Special Court for POCSO Act Cases, Tirunelveli.

(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



CRL MP(MD) No.15359 of 2023

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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/-
10/11/2023

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10/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1.THE JUDGE, SPECIAL COURT FOR POCSO ACT CASES, TIRUNELVELI.

2.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
AMBASAMUDRAM,
TIRUNELVELI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.

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



CRL MP(MD) No.15359 of 2023

+1 CC to M/s.S.MANDHIRALINGESWARAN, Advocate (SR-16235[I] dated
10/11/2023)

ORDER
IN
CRL MP(MD) No.15359 of 2023
IN
CRL A(MD) No.970 of 2023
Date :10/11/2023

RK (10/11/2023) 7P / 6C

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