



CRL MP(MD) No.14250 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.14250 of 2023

IN

CRL A(MD) No.768 of 2023

DEEPANRAJ @ DEEPAN
(NOW CONFINING AT
TRICHY CENTRAL PRISON).

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PUDUKKOTTAI DISTRICT.
(IN CRIME NO.22/2021).

... 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 in Spl.SC.No.9/2022 on the file of the Honble Sessions Judge, Mahila Court, Pudukottai dated 22/12/2022 and release the petitioner on bail till the disposal of the appeal.

PRAYER in CRL A(MD) No.768 of 2023:

To call for the entire records connected to the judgment in Spl.S.C.No.09 of 2022 on the file of the Hon'ble Sessions Judge, Mahila Court, Pudukottai dated 22.12.2022 and set aside the conviction and sentence imposed against the appellant.



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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.ALAGUMANI R, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

Reserved on : 01.11.2023

Pronounced on : 10.11.2023

The petitioner has filed this petition to suspend the sentence imposed against him in Spl.S.C.No.9 of 2022 on the file of the learned Sessions Judge, Mahila Court, Pudukottai dated 22.12.2022 and to release him on bail till the disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The petitioner is the father of the victim girl aged 2 years 6 months. The defacto complainant/PW1 is 2nd wife of the petitioner and mother of the victim girl. The petitioner is often used to consume liquor and quarrel with the defacto complainant. On 21.10.2021 at 12.00 noon the victim child stated her mother/defacto complainant that the petitioner touched her private part. The defacto complainant told her to say 'no' if the petitioner continues. Later on 22.10.2021 at 9.00 p.m when the defacto complainant went to bathroom and returned, the victim child again told that the



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petitioner again touched her private part. Hence, the defacto complainant lodged a complaint. Based on the complaint FIR was registered in Cr.No.22 of 2021 by the respondent police. P.W.6 Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offence under Sections 9(1)(m)(n) r/w 10 of POCSO Amendment Act.

(i) To prove the charge the prosecution examined 6 witnesses as P.W.1 to P.W.6 and marked 9 exhibits as Ex.P.1 to Ex.P.9. The petitioner/accused examined three witnesses as D.W.1 to D.W.3 and marked one exhibit as Ex.D.1. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty under Section 10 of POCSO Amendment Act and convicted and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment by passing impugned judgment dated 22.12.2022.

3. 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 till the disposal of appeal.



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

5. The learned counsel for the petitioner has submitted that the defacto complainant had already married one Pradeep in 2006 and had two children through him. The said Pradeep with his children eloped with younger sister of the defacto complainant. Thereafter, the defacto complainant fell in love with the petitioner and married the petitioner. Out of their marriage the victim child was born to them. The defacto complainant is an immoral woman and had illegal contact with many persons. The petitioner warned her. Even then she continued her illegal contacts. In the year 2020, D.W.3 arrested the defacto complainant for involvement in prostitution. The defacto complainant left the petitioner and the victim child for three months. The petitioner was doing all the needs of the victim child and attending the natural call of the victim child. The defacto complainant returned home and lived under same roof. Again she continued her illegal affairs with some other men and so, the petitioner strictly warned. Having this motive, the defacto complainant lodged the false complainant making use of the victim child. The petitioner never committed the alleged offence upon the victim child, who is his



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affectionate daughter. P.W1 and D.W.2 also deposed about the petitioner's affection and love towards victim child. The petitioner is in prison from 24.10.2021. The petitioner has fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 2 ½ years child at the time of alleged occurrence. The victim child as P.W.2 clearly deposed about the commission of offence by the petitioner. P.W.1 also gave evidence substantiating the contents of the complaint. The Trial Judge has properly appreciated the evidence of P.W.1 and P.W.2 and found guilty of the charge against the petitioner. The period of custody is immaterial. The gravity of the offence committed by the petitioner has to be looked in this case, that too committed upon her own 2 ½ years female child. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

7. In reply, the learned counsel for the petitioner argued that the P.W.1 admitted that the victim child would be affectionate on his father, the petitioner herein, and admitted the case, which was registered against her under PIT Act and the same was proved by D.W.3.



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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. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the defacto complainant is an immoral woman and when she was warned by the petitioner, this case was foisted against the petitioner and the petitioner has fair chance of succeed in appeal. 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 and also certain admission in respect of love and affection of the petitioner upon the victim girl. 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 that the petitioner/appellant is in prison for nearly two years from the date of his arrest and more than 1/3 portion of the sentence of 5 years. 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 grant of suspension of sentence.

9. Accordingly, the relief of suspension of sentence is granted to the petitioner and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-



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(i) The petitioner is directed to be enlarged on bail on execution of 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, Mahila Court, Pudukottai;

(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 Court on all working days at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

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.

VSD
TO

1 THE SESSIONS JUDGE,
MAHILA COURT, PUDUKOTTAI.



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2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PUDUKKOTTAI DISTRICT.

3 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY.

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

+ 1 CC TO M/S.ALAGUMANI R, Advocate IN SR No.16317 dated 15/11/2023

ORDER
IN
CRL MP(MD) No.14250 of 2023
IN
CRL A(MD) No.768 of 2023
Date :10/11/2023

SS/SAR- /10/11/2023/5P/6C

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