



CRL MP(MD) No.14784 of 2023

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

Thursday, the Nineteenth day of October Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P.VADAMALAI

CRL MP(MD) No.14784 of 2023

IN

CRL A(MD) No.939 of 2023

1 PERUMAL

2 ANDIVEL @ PAPOON ANDIVEL

... PETITIONERS/ APPELLANTS

Vs

THE INSPECTOR OF POLICE
VADAMADURAI POLICE STATION,
DINDIGUL DISTRICT
IN CRIME NO.57/2021

... RESPONDENT/RESPONDENT

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 on the 2nd petitioner/2nd Appellant in Spl.SC No.95/2023 on the file of the Learned Special Court(Protection of Children from Sexual Offences Act) Dindigul dt.21/9/2023 and enlarge petitioner on bail pending disposal of the instant criminal appeal.

PRAYER IN CRL.A(MD).939/2023:

Pleased to call for the records and set aside the conviction and sentence imposed on the Appellants by the Learned Special Court (Protection of Children from Sexual Offences Act, cases) Dindigul in Spl.S.C.No.95 of 2023 dated 21.09.2023 and allow the Criminal Appeal preferred by this Appellants/ Accused No.1 & 2.

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.AJMAL KHAN S A, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, While admitting the Criminal Appeal, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed



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by the learned Special Court (Protection of Children from Sexual Offence Act, Cases), Dindigul, in Spl.S.C.No.95 of 2023 dated 21.09.2023 and enlarge the 2nd petitioner/Accused No.2 on bail till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 20.01.2021, the minor victim girl/P.W.1 along with her mother and her brother went to Drama at 09.00 p.m and they returned back to the home. While they were sleeping at home, the accused persons entered into the house and tried to misbehave with victim girl and her mother. Therefore, defacto complainant gave a complaint against the accused persons and the case was registered against the accused persons by the respondent police in Crime No.57 of 2021. After completion of investigation formalities, final report was filed before the Special Court (POCSO Act Cases), Dindigul and the same was taken on file in Spl.S.C.No.95 of 2023.

3. Before the trial Court, on the side of the prosecution, 11 witnesses have been examined as P.W.1 to P.W.11 and 15 documents were marked as Ex.P1 to Ex.P15. On the side of the accused, 5 witnesses were examined as D.W.1 to D.W.5 and 11 documents were marked as Ex.D1 to Ex.D11.

4. The Special Court (Protection of Children from Sexual Offence Act, Cases), Dindigul, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated



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21.09.2023 by convicting the Accused Nos.1 and 2 and Accused Nos.3 to 12 were acquitted. The second petitioner/Accused No.2 was found guilty for the offence under Section 451 of IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- (Rupees Five Thousand only), in default to undergo simple imprisonment for a period of one month, and convicted for the offence under Section 354(b) of IPC and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month and convicted for the offence under Section 4 of TNPHW Act and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default to undergo simple imprisonment for a period of one month and sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the petitioners preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence for the second petitioner/Accused No.2.

5. The learned counsel for the second petitioner would submit that the second petitioner/Accused No.2 paid the entire fine amount on the same day and the sentence of imprisonment passed against the second petitioner/Accused No.2 has been suspended by the trial Court till 20.10.2023 and there are several infirmities in



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the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses and he prays to allow this petition.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the second petitioner/Accused No.2 and hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

8. The learned counsel for the second petitioner/Accused No.2 pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The Trial Court suspended the sentence imposed against the second petitioner/Accused No.2 till 20.10.2023. 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 second petitioner/Accused No.2 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 passed against the second petitioner/Accused No.2 is suspended pending disposal of the appeal with the following directions:-



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(i) The second petitioner/Accused No.2 is directed to be enlarged on bail on condition that the second petitioner/Accused No.2 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 (Protection of Children from Sexual Offence Act, Cases), 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

(iii) The second petitioner/Accused No.2 shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders.

sd/-
19/10/2023

/ TRUE COPY /

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

TTA
TO
1 THE SESSIONS JUDGE,
SPECIAL COURT (PROTECTION OF CHILDREN FROM
SEXUAL OFFENCE ACT CASES) DINDIGUL.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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



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3 THE INSPECTOR OF POLICE
VADAMADURAI POLICE STATION, DINDIGUL DISTRICT

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

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (CALL FOR RECORDS)

+1. C.C. to M/S.AJMAL KHAN S A Advocate SR.No.15427

ORDER
IN
CRL MP(MD) No.14784 of 2023
Date :19/10/2023

SA/SAR. /20.10.2023/6P/7C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.