



CRL MP(MD) No.15384 of 2023

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

Thursday, the Fourteenth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15384 of 2023

IN

CRL A(MD) No.268 of 2023

BALAKRISHNAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
IN CRIME NO.19/2021.

... 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 by the learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Spl.S.C.No.01/2022 dated 10.02.2023 and enlarge the petitioner on bail pending disposal of Criminal Appeal.

Prayer in Crl.A(MD).268/2023:

Pleased to call for the records and set aside the judgment and conviction passed in Spl.S.C.No.01 of 2022 dated 10.02.2023 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and acquit the Appellant herein.

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 Mr.S.BASKAR MATHURAM, Advocate for M/S.MATHURAM LAW ASSOCIATES, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public

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



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Prosecutor on behalf of the Respondent, the court made the following order:-

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Reserved on : 30.11.2023

Pronounced on : 14.12.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.01 of 2022, dated 10.02.2023 by the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that on 27.11.2021 when the victim girl, who was aged 15 years, was in her home, the petitioner/accused, who is none other than her father's sister's husband came to the victim's house and misbehaved with her. Further on 30.11.2021 at about 04.45 pm when the victim girl was returning from her school in cycle, the petitioner/accused stopped her and by dragging her kissed her and squeezed her breast. Based on the complaint, FIR was registered in Crime No.19 of 2021 for the offence under Section 9(n) r/w 10 of POCSO Act 2012. After completion of investigation, final report was filed before the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and the same was taken on file in Spl.S.C.No.01 of 2022.

3. During the trial, the prosecution has examined 6 witnesses as P.W.1 to P.W.6 and exhibited 9 documents as Ex.P.1 to Ex.P.9. The defence has exhibited six documents as Ex.D.1 to Ex.D.6, but adduced no oral evidence.



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4. The learned trial Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 10.02.2023 convicting the petitioner/accused for the offence under Section 448 IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo three months simple Imprisonment and for the offence under Section 10 of POCSO Act sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.7,000/-, in default, to undergo six months simple imprisonment. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

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

6. The learned counsel appearing for the petitioner would submit that that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. Further, the learned counsel for the petitioner would submit that this is the third application and the earlier applications were dismissed by this Court in CrI.M.P(MD)No.5454 of 2023 and CrI.M.P(MD)No.11019 of 2023 on 12.05.2023 and 02.08.2023 respectively. The petitioner is in judicial custody from 10.02.2023 and he is the only breadwinner of his



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family and hence, he prayed to suspend the sentence imposed on the petitioner.

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7. The learned Additional Public Prosecutor appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. Further, he would submit that this is the third application and the earlier applications were dismissed by this Court on 12.05.2023 and 02.08.2023 and there is no change in circumstances. Hence, he strongly opposed to grant suspension of sentence.

8. The earlier applications for suspension of sentence filed by the petitioner in CrI.M.P(MD)No.5454 of 2023 and CrI.M.P(MD)No.11019 of 2023 were dismissed by this Court on 12.05.2023 and 02.08.2023 respectively.

9. Considering the seriousness and gravity of the charges allegedly proved against the petitioner, this Court does not find any new ground to suspend the sentence imposed on the petitioner.

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

sd/-
14/12/2023

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/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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VSD

TO

1 THE JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.

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

ORDER
IN

CRL MP(MD) No.15384 of 2023

Date :14/12/2023

SA/JGB/SAR. /21.12.2023/5P/5C

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