



CRL MP(MD) No.15105 of 2023

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

Monday, the Sixth day of November Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI
CRL MP(MD) No.15105 of 2023
in
CRL A(MD) No.59 of 2023

RAMADOSS

... PETITIONER/ APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SATTUR, VIRUDHUNAGAR DISTRICT,
CRIME NO.8/2021

... 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 Petitioner / Appellant in Spl SC No.46/2021 on the file of Special Court of POCSO Act Cases Virudhunagar District Srivilliputtur dt.08.11.2022 and enlarge him on bail pending disposal of the instant Criminal Appeal.

Prayer in CRL A(MD).59 of 2023 :

To admit the appeal preferred by this Appellant and call for the records of the Judgment passed in Spl.S.C.No.46/2021 on the file of Special Court of POCSO Act Cases, Virudhunagar District Srivilliputtur dated 08.11.2022 and set aside the same and thereby allow this Appeal.

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.N.NALLATHAMBI RAJ, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



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Reserved on : 31.10.2023
Delivered on : 06.11.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Special Court of POCSO Act Cases, Virudhunagar District, Srivilliputtur, dated 08.11.2022, in Special S.C.No.46 of 2021 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2. The case of the prosecution is that on 02.07.2021 at about 03.00 p.m., when the victim was playing in front of the accused house, he was taken to his house and sexually abused him by inserted his private part in the mouth and thereby, had committed penetrative sexual assault. Upon which, a case in crime No.8 of 2021 was filed. After completing the formalities of investigation, final report was filed for the offences punishable under Sections 366 IPC and Section 5(m) r/w 6 of the POCSO Act and it was taken on file in Spl.S.C. No.46 of 2021, by the trial Court.

3. During trial process, on the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9 and 11 documents marked as Ex.P1 to Ex.P11. On the side of the accused, neither oral evidence nor documentary evidence has been adduced.

4. At the conclusion of the trial, the trial Court found the petitioner guilty and sentenced him to undergo 5 years rigorous imprisonment and imposed a fine of Rs.10,000/- with default clause for the offence under Section 363 IPC and to undergo



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20 years rigorous imprisonment and imposed a fine of Rs.10,000/- with default clause for the offence under Section 5(m) r/w 6 of POCSO Act, 2012 and also awarded compensation of Rs.1,00,000/- under Section 7(3) of POCSO Rules.

5. Challenging the above said conviction and sentence, criminal appeal has been preferred before this Court. Pending appeal, this miscellaneous petition has been filed seeking suspension of sentence.

6. The learned counsel for the petitioner would submit that there was a strong motive for the parents of the victim to implicate this petitioner in the above said offence. There is a delay of 4 days in preferring the complaint and no neighbour was also examined. He further submitted that this is second petition to suspend the sentence, earlier petition filed by the petitioner in CrI.M.P(MD).No.2918 of 2023 in CrI.A(MD).No.59 of 2023 was dismissed by this Court, on the ground that if he is released on bail by suspending the sentence, there is every likelihood to making trouble the victim and also considering the gravity of the offence. He further submitted that this second petition has been filed mainly on the ground that the petitioner is in judicial custody from 08.11.2022.

7. Per contra, the learned Additional Public Prosecutor submitted that the victim boy was aged about only 3 years and was sexually abused by the petitioner, who was aged about 43 years, at the time of occurrence. So according to him, no



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ground can be made out to suspend the sentence. He further submitted that without any valid ground, the present petition has been filed by the petitioner.

8. PW1 is the Junior Paternal Uncle of the victim and he has stated that on the date of occurrence, at about 3.45 p.m., he heard crying noise of the victim from the house of the accused. On hearing the noise, he went to the house and through the opening of the door, he saw the occurrence. The accused inserted his private part in the mouth of the victim. On the basis of the above said occurrence complaint was lodged and the case has been registered. Absolutely, no motive was also brought on record. A simple motive was suggested that after the above said alleged date of occurrence as there was a quarrel between the two families. Except that no motive was also suggested. Whether there was any previous complaint by PW1 before the Sattur Police Station even though suggested, no document was produced before the Court by the defence to know the nature of the complaint. Simply because there was a delay of 4 days in giving the complaint, the prosecution case cannot be disbelieved. Whether the evidence of PW1 is sufficient enough to record a conviction is the only point which arises for consideration in the appeal.

9. The earlier petition filed in Crl.M.P(MD).No.2918 of 2023 in Crl.A(MD).No.59 of 2023 was dismissed by this Court, on the ground that if he is released on bail by suspending the sentence, there is every likelihood to making trouble the victim and



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also considering the gravity of the offence. Now, this application is filed by the petitioner without referring the change of circumstances to consider the case.

10. Since there is no change of circumstance and also considering the gravity of offence and the manner in which the offence was committed by the petitioner, this Court is of view that this petitioner is not entitled for suspension of sentence.

Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-

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/11/2023

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

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TO

1 THE SESSIONS JUDGE, SPECIAL COURT OF POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR.

2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
SATTUR, VIRUDHUNAGAR DISTRICT,.

3 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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



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ORDER

IN

CRL MP(MD) No.15105 of 2023

in

CRL A(MD) No.59 of 2023

Date :06/11/2023

RS/VRS/SAR-(10.11.2023) 6P 5C

Madurai Bench of Madras High Court is issuing
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