



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

Thursday, the Twenty Third day of February Two Thousand and Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.15105 of 2022

IN

CRL A(MD) No.834 of 2022

VIJAYAKUMAR

... PETITIONER/APPELLANT

Vs

STATE REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUPPARANKUNDRAM,
MADURAI DISTRICT.
CRIME NO.5 OF 2019.

... RESPONDENT/RESPONDENT

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 of Imprisonment imposed by the Learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai made in Special Sessions Case No.77 of 2019 by the Judgment dt.9.11.2022.

PRAYER IN CRL A(MD) No.834 of 2022:-

To call for the records and set aside the Judgement and Conviction dated 09.11.2022 by the Learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai made in Special Sessions Case No.77 of 2019 and acquit the Appellant.

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.KANAGARAJAN S, Advocate for the petitioner the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special Sessions Case No.77 of 2019, dated 09/11/2022 by the Special Court for exclusively Trial of Cases under POCSO Act Cases, Madurai and enlarge the petitioner on bail pending disposal of the criminal appeal.



2. The case of the prosecution in brief:-

The victim girl was aged about 14 years at the time of the occurrence. Along with her sister, she used to go to the Government Higher Secondary School, Thirupparankundram in an auto. On 18/03/2019, as usual she went to the school in the auto belongs to the petitioner. He is also the driver of the auto. When the victim returned back to the house in the above said auto at 04.30 pm, at that time, the petitioner misbehaved with her sexually. More-over, at the time of the occurrence, some other identified person was the driver in the auto, but the petitioner sitting behind her. When she raised alarm, the petitioner said to have asked the driver of the auto to proceed without stopping. The above said occurrence was intimated to her parents. Upon which, a case in Crime No.5 of 2019 was filed. After completing the formalities of investigation, final report was filed for the offences punishable under sections 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012 against A1 and for the offence under section 16 r/w 17 of the Protection of Children from Sexual Offence Act, 2016 and it was taken on file in SSC No.77 of 2019 by the trial court.

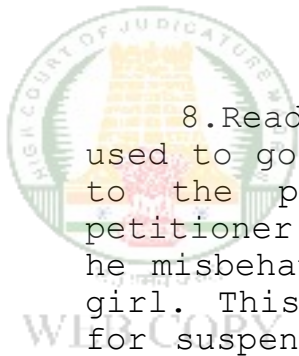
3. During trial process, on the side of the prosecution, 11 witnesses were examined and 12 documents marked, apart from that, one materials object marked. On the side of the accused, neither oral evidence nor documentary has been adduced. One document was marked on the side of court.

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.5,000/- with default clause for the offence under section 6 and 8 of the POCSO Act, 2012. 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.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would submit that the age of the victim girl was not proved before the trial court and the birth certificate of the victim was not produced during the course of trial. According to him, the allegations are false in nature, so the petitioner is entitled for suspension of sentence.

7. Per contra, the learned Additional Public Prosecutor would submit that taking advantage of the position and his acquaintance with the school going children, the above said misbehaviour has been exhibited by the petitioner. So, the petitioner is not entitled for suspension of sentence.



8. Reading of the evidence of the victim girl shows she used to go to the school and return back by the auto, which belongs to the petitioner. The above said situation shows that the petitioner ought to have been the guardian of the victim girl, but he misbehaved, which causes much trouble in the mind of the victim girl. This circumstance alone is sufficient to reject the request for suspension. The offence of such nature and that too a person, who was in the capacity of auto driver taking the school children to the schools cannot be taken as lightly.

9. So this court is not inclined to enlarge the petitioner by suspending the sentence and accordingly this criminal miscellaneous petition is dismissed.

sd/-
23/02/2023

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/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1 SESSIONS JUDGE, PRINCIPAL SPECIAL COURT
FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
MADURAI.
- 2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUPPARANKUNDRAM,
MADURAI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.15105 of 2022
IN
CRL A(MD) No.834 of 2022
Date : 23/02/2023