



CRL MP(MD) No.16030 of 2023

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

Wednesday, the Sixth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.16030 of 2023

in

CRL A(MD)No. 442 of 2023

SOLLAMADAN

... PETITIONER/PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
AMBASAMUDRAM,
TIRUNELVELI DISTRICT.
CRIME NO.7/2017.

... RESPONDENT/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 of imprisonment imposed on him by Honble Sessions Judge, POCSO Special Court, Tirunelveli District in SPL. Case.No.25 of 2019 dated 08.09.2022 pending disposal of Criminal Appeal.

PRAYER IN CRL A(MD)No. 442 of 2023:

To call for the records and to set aside the conviction judgment passed by the Sessions Judge, POCSO Special Court, Tirunelveli District in SPL.Case No. 25/2019 dated 08.09.2022.



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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.A.S.KRISHNAN, 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 : 24.11.2023

Pronounced on : 06.12.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner in Spl.C.No.25 of 2019, dated 08.09.2022 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli District pending disposal of the Criminal Appeal.

2. The learned counsel appearing for the petitioner submitted that the learned trial Judge has convicted the petitioner only on assumption and presumption and not on evidence. Further, the petitioner has no bad antecedent and previous conviction for any offences. Hence, he prayed to suspend the sentence imposed on the petitioner.

3. 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. He would further submit that this is the second application and the earlier application was dismissed by this Court in Crl.M.P(MD) No.8281 of 2023 on 27.04.2023 and there is no change in circumstances. Hence, he strongly opposed to grant suspension of sentence.



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

5. This petition has been filed to suspend the sentence imposed on the petitioner as a second time. In earlier occasions, this Court passed a detailed order and dismissed the same in Crl.M.P(MD)No.8281 of 2023 dated 27.04.2023, which is as follows:

"2. The case of the prosecution is that on 25.03.2017, the petitioner, who is the father of the victim girls, in drunken mode, came to the house and had committed sexual harassment on the victim girls and he has also threatened them that not to inform the same to anybody. On the basis of the complaint lodged, FIR came to be registered in Crime No.7 of 2017. The respondent police, after completing the investigation, has laid a final report for the offence under Section 506(i) IPC and Section 8 of POCSO Act (2 counts).

3. During trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and exhibited 27 documents as Ex.P.1 to Ex.P.27. The defence has adduced neither oral nor documentary evidence.



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4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 08.09.2022, finding the accused guilty for the offences under under Section 506(i) IPC and sentenced him to undergo six months rigorous imprisonment and convicting him for the offence under Section 8 of POCSO Act (2 counts) and sentenced him to undergo five years rigorous imprisonment for each count and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year for each count. Aggrieved by the judgment of conviction and sentence, the accused has come forward with the present appeal.

5. The learned counsel for the petitioner would submit that the prosecution witnesses are all blood relative witnesses and no independent witness had been examined; that the alleged victim girls are none other than the own daughters of the petitioner and their statements stand not corroborated with medical evidence and other witnesses; that the statements under Section 164 Cr.P.C., recorded from the victim girls at a



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very belated stage; that the petitioner/appellant was not given sufficient opportunity to defend the case effectively; that P.W.3 to P.W.9 have not supported the case of the prosecution; that there is evidence to the fact that there existed serious misunderstanding and problems between the family members; that the very occurrence alleged by the prosecution are all false and that he has been falsely implicated in the above case.

6. The learned Government Advocate (Criminal Side) would submit that the victim girls P.W.1 and P.W.2 have deposed about the sexual assault committed by their own father/petitioner herein; that the prosecution had adduced ample evidence to show that the petitioner/accused was a habitual drunker and he used to come to his home in drunken stage and assaulted her daughters sexually; that the victims have clearly deposed that the petitioner/accused had directed them to sleep with him and thereafter, they can marry anyone and that the learned trial Judge, upon considering the entire evidence available on record with proper perspective, has

rightly convicted the accused.



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7. It is pertinent to note that the petitioner/accused has sexually assaulted his own minor daughters. As rightly contended by the learned Government Advocate (Criminal Side), the points/aspects now canvassed by the petitioner side are matter for consideration in the main appeal.

8. Considering seriousness and gravity of the offence allegedly proved against the petitioner and also taking note of the fact that the petitioner is the father of the victim girls and also the fact that the impugned judgment was passed on 08.09.2022 and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time. 9. In the result, the Criminal Miscellaneous Petition is dismissed".

6. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, who is the father of the victim girls, this Court does not find any new grounds to suspend the sentence imposed on the petitioner.



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

sd/-
06/12/2023

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

VSD
TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL
OF CASES UNDER POCSO ACT,
TIRUNELVELI DISTRICT
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, AMBASAMUDRAM,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.16030 of 2023
in
CRL A(MD)No. 442 of 2023
Date :06/12/2023

PKP/SS/SAR- /12.12.2023/ 7P/ 5C

Madurai Bench of Madras High Court is issuing certified
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