



Crl.M.P(MD)No.15093 of 2023

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

Friday, the Seventeenth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

Crl.M.P(MD)No.15093 of 2023
in
Crl.A.(MD)No.374 of 2023

K.PERIYAKARUPPAN

...APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
D3 KOODALPUTHUR POLICE STATION,
MADURAI DISTRICT.
CRIME NO. 195/2013

... RESPONDENT/COMPLAINANT

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 Special Judge, Principal Special court for exclusive trial of cases under POCSO Act, Madurai in Spl SC No. 70 of 2017 by the Judgment and conviction dt. 21.03.2023 and enlarge the Petitioner/ Accused on bail, pending disposal of the above said Criminal Appeal.

PRAYER IN CRL.A(MD).374/2023:

Pleased to call for records and set aside the Judgment and Conviction 21.03.2023 by the Learned Special Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai, in Spl.S.C.No.70 of 2017 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 MR.B.VINOTHKUMAR,



Crl.M.P(MD)No.15093 of 2023

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 : 30.10.2023

Delivered on : 17.11.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Principal Special Court for exclusive trial of cases under POCSO Act, Madurai, in Spl.S.C.No.70 of 2017, dated 21.03.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner/sole accused took the victim child in his TVS XL bearing Registration No.TN-59-AY-0313 to behind the office of Koodalpudur telephone exchange where there was damaged unused houses, that the petitioner asked the victim child to remove her dresses and committed aggravated penetrative sexual assault, that when the victim child could not bear the pain and shouted out of fear, the petitioner threatened her not to inform to anyone, that thereafter, the petitioner brought the victim child to her house for dropping and then the petitioner has gone out, that the victim child was crying hence, her mother enquired and came to know about the occurrence and that on the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime

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



Crl.M.P(MD)No.15093 of 2023

No.195 of 2013.

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3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 3, 4, 5(m) and 6 of POCSO Act, 2012 and Section 506(1) IPC and the case was taken on file in Spl.S.C.No.70 of 2017 and the same was pending on the file of the Principal Special Court for exclusive trial of cases under POCSO Act, Madurai.

4. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 22 documents as Ex.P.1 to Ex.P.22 and marked 1 material object as P.M.O.1. The defence has examined 2 witnesses as D.W.1 and D.W.2.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 21.03.2023 convicting the petitioner for the offences under Sections 5(m) r/w 6 of POCSO Act, 2012 and Section 506(1) IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Sections 5(m) r/w 6 of POCSO Act, 2012 and to undergo 2 years Rigorous Imprisonment and to pay a fine of



Crl.M.P(MD)No.15093 of 2023

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Rs.1,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 506(1) IPC and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above application for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that there existed dispute between P.W.1 and the petitioner with respect to her husband's passport, which was in the custody of the petitioner, that D.W.1 and D.W.2 have deposed about the same, but the trial Court has not dealt with that issue properly, that there was no recovery of victim child's dress as the incident was allegedly occurred behind the telephone exchange, that the evidence of P.W.1 was not corroborated by the other witnesses, that there is no evidence for proving the alleged occurrence except the evidence of P.W.2-victim child, that the evidence of minor cannot be accepted when her evidence was not corroborated with other evidence and that the trial Court, without considering the above material aspects, had recorded the conviction. He further submitted that this is a fourth petition for suspension of sentence, earlier petitions filed by the petitioner was dismissed by this Court and also submitted that this petition has been filed mainly on the ground that the petitioner is in judicial custody from 21.03.2023.



Crl.M.P(MD)No.15093 of 2023

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7. The learned Additional Public Prosecutor appearing for the respondent would submit that the custody of the passport with the petitioner was utilized for taking vague defence, but the petitioner has miserably failed to prove the said defence, that P.W.1-mother of the victim child informed the incident to P.W.4 and after the arrival of P.W.4 they met the elders and lodged the complaint before the respondent police, that the trial Court itself has rightly opined that P.W.1 rightly waited for arrival of her husband for lodging the complaint, that the evidence of the victim child as well as the other circumstantial evidence are unimpeachable and inspires the confidence of the Court and that the trial Court, upon considering the evidence available on record, has rightly convicted the petitioner. He further submitted that without any valid ground, the present petition has been filed by the petitioner.

8. The earlier petitions filed in Crl.M.P(MD).Nos.7234, 10146 and 13490 of 2023 were 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 girl, considering the age of the victim girl and also considering the gravity of the offence.

Now, this application is filed by the petitioner without referring the change of



Crl.M.P(MD)No.15093 of 2023

circumstances to consider the case.

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9. 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/-
17/11/2023

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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,
PRINCIPAL SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT, MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
D3-KOODAL PUTHUR POLICE STATION, MADURAI DISTRICT.



Crl.M.P(MD)No.15093 of 2023

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

ORDER
IN
Crl.M.P(MD)No.15093 of 2023
in Crl.A.(MD)No.374 of 2023
Date :17/11/2023

RK/JGB (21/11/2023) 7P /5C

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