



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

Tuesday, the Third day of January Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL MP(MD) No.15380 of 2022

IN

CRL A(MD)No.848 of 2022

JOKLINE

... APPELLANT/ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
NITHIRAVILAI POLICE STATION.
CRIME NO.108 OF 2016.

... 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 execution of the sentence dt.28.10.2022 passed by Spl.SC.No.7 of 2017, on the file of the Learned Special Court for Exclusive Trial of Cases, under POCSO Act, Kanyakumari at Nagercoil and enlarge the Petitioner on bail.

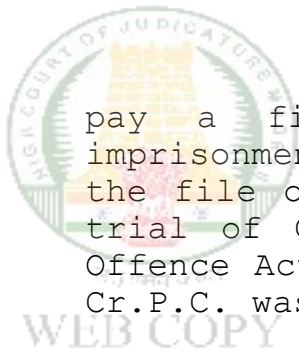
PARYER IN CRL A(MD)No.848 of 2022:

Pleased to set aside the conviction and sentence imposed in the judgment dated 28.10.2022 made in Spl.S.C.No.7 of 2017, on the file of the learned Special Court for Exclusive Trial of cases Under POCSO ACT, Kanyakumari at Nagercoil.

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.MARIOJOHNSON D, Advocate for the petitioner and of MR.M.SAKTHI KUMAR, Government Advocate (Criminal Side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive trial of Cases under the Protection of Children from the Sexual Offence Act, Kanniyakumari at Nagercoil, dated 28.10.2022, in Special S.C.No.7 of 2017 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner, who is the accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 6 of Protection of Children from the Sexual Offence Act, 2012, to undergo 20 years rigorous imprisonment and to



pay a fine of Rs.10,000/- in default to undergo imprisonment for a period of one year in Special S.C.No.7 of 2017 on the file of the learned Sessions Judge, Special Court for Exclusive trial of Cases under the Protection of Children from the Sexual Offence Act, Kanniyakumari at Nagercoil. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

The age of the victim girl at the time of alleged occurrence is 12 years. The accused was residing opposite to the house of the victim girl. On 22.05.2016 at about 12.00. p.m. the victim girl went to the house of the accused to return the TV remote unit, which was used by the defacto complainant. At that time, the accused misbehaved sexually with her by touching her private parts and on the basis of the above said occurrence, complaint was lodged and FIR was registered on 24.05.2016 under Sections 3(b), 4, 8, 9(m), 10 of POCSO Act, 2012. After completing the formalities of the investigation, final report was filed charging the accused for the offence punishable under Sections 5(m) r/w 6 of POCSO Act, 2012. Before the trial Court on behalf of the prosecution 13 witnesses have been examined and 14 documents were marked. On the side of the accused, none was examined and no documents were marked.

4.At the conclusion of the trial, the trial Court came to the finding that the charge that was framed against the accused person was proved beyond the reasonable doubt. On that basis, the accused was found guilty and convicted and sentenced above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.The learned counsel for the petitioner submitted that there are material contradictions with regard to the evidence of PW1 and PW10. As per the case of the prosecution the Hall in the house of the petitioner is visible from the outside. So absolutely, there is no possibility for the offence is have taken place. The Wound Certificate of the victim girl has not supported the case of the prosecution. There is a delay in registering the complaint. In the 164(5) Cr.P.C. statement of the victim girl, she has mentioned the place of occurrence as Kitchen. The material witnesses were also turned hostile.

6.Per contra the learned Government Advocate (Crl. Side) would submit that it is a sexual assault committed upon a minor girl, who is aged about 12 years. PW3 has supported the case of the prosecution. The manner, in which, the occurrence said to have been taken place dis-entitles the petitioner to claim suspension of sentence.

7.No doubt, there is a delay in registering the complaint and <https://www.mca.gov.in/judis> been stated that the defacto complainant was worried



about the future of the child. After discussing with her, the complaint was given on 24.05.2016. So that cannot be found fault. With regard to the motive also no circumstance is available in favour of the petitioner. It is also seen that PW1 did not consent to send the victim girl for medical examination. The victim girl has given clear statement with regard to the above said alleged sexual assault. She stated that when the petitioner misbehaved with her by touching her private parts, she raised cry. Because of the above said cry, the accused person stopped his misbehaviour. So, whether the evidence of the victim girl can be relied, is only the matter for consideration in the appeal. Similarly, when the non medical examination of the victim girl is fatal to the prosecution, is also the matter for consideration in the appeal.

8.I find that considering the age of the victim girl and the manner, in which, the above said occurrence said to have been committed, the petitioner is not entitled for suspension of sentence. If he is released on bail by suspending the sentence, there is every likelihood of making trouble to the victim girl.

9.This petition deserves to be dismissed. Accordingly, **dismissed.**

sd/-
03/01/2023

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/01/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1 THE SPECIAL JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, KANYAKUMARI AT NAGERCOIL
- 2 THE INSPECTOR OF POLICE
NITHIRAVILAI POLICE STATION.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.15380 of 2022
IN
CRL A(MD) No.848 of 2022
Date :03/01/2023