



CRL MP(MD) No.15729 of 2023

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

Thursday, the Twenty First day of December Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15729 of 2023

in

CRL A(MD) No.6 of 2022

K.MOHANA PRAKASH

... Petitioner / 1t Appellant

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SEKKANOORANI POLICE STATION,
USILAMPATTI,
MADURAI DISTRICT.
(CRIME NO. 425/2014)

... 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 by Sessions Judge, Special court for Exclusive trial of cases under POCSO Act, Madurai in S.C No. 14 of 2015 dt. 29.11.2021 and enlarge the petitioner / Appellant on bail pending disposal of the above said criminal appeal.

Prayer in CRL A(MD) No.6 of 2022:

To call for the records and set aside the judgment dated 29.11.2021 made in Special S.C.No.14 of 2015 on the file of the Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai and allow the above criminal 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.M.KARUNANITHI, Advocate for the petitioner and of



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Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent,
the court made the following order:-

Reserved on : 30.11.2023
Pronounced on : 21.12.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.14 of 2015, dated 29.11.2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim's father was working as a watchman in C.K.Kalyana Mahal; that the victim who was studying 10th Standard at that time, used to go to the said Kalyana Mahal for studying; that on 09.10.2014 at about 09.00 pm, the victim girl as usual, was studying in the frontage of the Kalyana Mahal; that both the accused had stealthily come there and after closing her mouth with cloth forcibly took her to the underground of the Kalyana Mahal; that while the second accused was holding the legs of the victim girl, the petitioner/first accused had committed penetrative sexual assault on the victim girl, that since tying of her hands got loosened, she escaped from that place and went to her home and informed about the incident to her mother. Based on the complaint, FIR was registered in Crime No.425 of 2014 for the offences under Sections 366(A), 376, 342,



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34 IPC r/w 3, 4, 5(g) of POCSO Act. The respondent, after completing the investigation has laid the final report on 20.03.2015 and the case was taken on file in Spl.S.C.No.14 of 2015.

3. During trial, the prosecution has examined 21 witnesses as P.W.1 to P.W.21 and exhibited 26 documents as Ex.P.1 to Ex.P.26 and four material objects marked as M.O.1 to M.O.4. The accused have examined one witness as D.W.1 and no document was marked.

4. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment, dated 29.11.2021, convicting the petitioner for the offence under Section 342 r/w Section 34 of IPC and sentenced him to undergo one year imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months; Section 366 r/w Section 34 IPC and sentenced him to undergo 10 years imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment and Section 5(g) and 6 of POCSO Act, sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- , in default, to undergo 1 year simple imprisonment and to pay a sum of Rs.50,000/- as compensation to the victim. Challenging the above said conviction and sentence, the petitioner preferred the present Criminal Appeal.



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5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. The learned counsel appearing for the petitioner would submit that FIR came to be lodged with delay, that there was no proper explanation for the said delay and that the trial Court has not appreciated the contrary statements of the witnesses wherein all the witnesses have made a contrary statements against the petitioner and the entire judgment is based on the presumptions. Further, the learned counsel for the petitioner would submit that as per the Ex.P7 - Accident Register, which is earlier in point of time, she was assaulted by one known person, but the prosecution was against two persons and as per Ex.P11 - Age Certificate, the victim is above 17 years and hence POCSO Act is not applicable. He further submitted that this is a fourth petition for suspension of sentence, earlier petitions filed by the petitioner were dismissed by this Court and also submitted that this petition has been filed mainly on the ground that the petitioner is in judicial custody for more than two years and hence, he prayed to suspend the sentence imposed on the petitioner.

7. 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 fourth



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application and the earlier applications were dismissed by this Court on the ground of gravity of offence committed by the petitioner. There is no change in circumstances and without any valid ground, the present petition has been filed by the petitioner. Hence, he strongly opposed to grant suspension of sentence.

8. The petitioner's earlier three applications for similar relief were ordered to be dismissed on the ground of gravity of offence committed by the petitioner. Now, this application is filed by the petitioner without referring the change of circumstances to consider the case.

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 does not find any new ground to suspend the sentence imposed on the petitioner.

10. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-
21/12/2023

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/01/2024
Sub-Assistant Registrar
(C.S. I / II / III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD



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To **மேலாட்சி**

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1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Madurai.

2.The Inspector of Police,
All Women Police Station,
Sekkanoorani Police Station,
Usilampatti, Madurai District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) No.15729 of 2023
in
CRL A(MD) No.6 of 2022
Date :21/12/2023

ED/ JGB /SAR- (08/01/2024) 6P / 5C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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