



CRL MP(MD) No.15942 of 2023

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

Friday, the Eighth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15942 of 2023

in

CRL A(MD)No. 694 of 2023

S.SEKARAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.04/2022).

... 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 imposed on the petitioner by Learned Spl. Court for POCSO Act Cases, Virudhunagar District camp at Sriviliiputhur in Spl.SC.No.61/2022 by the Judgment dt.15/2/2023 and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A(MD)No. 694 of 2023:

To call for records and allow this appeal and set aside the judgment and conviction dated 15.02.2023 passed by the learned Special Court for POCSO Act cases, Virudhunagar District camp at Srivilliputhur in Special S.C.No. 61 of 2022 and acquit the appellant.



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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.DHANASEKAR K, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 21.11.2023

Pronounced on : 08.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him and release him on bail pending disposal of the Criminal Appeal against the judgment of Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District Camp at Srivilliputhur in Spl.S.C.No.61 of 2022 dated 15.02.2023.

2.The brief facts of the prosecution case:

The petitioner/accused is doing chicken sale at hand cart near the maternal grandmother's house of the victim child for the past 8 years. The victim child was aged 6 years. On 13.03.2022 at about 11.00 a.m the victim girl was playing in front of her grandmother house. At that time the petitioner/accused, who was cleaning his hand cart, called on her and took her behind the hand cart and committed sexual assault putting his hand on her private part and threatened her with criminal intimidation. The mother of the victim child lodged complaint before the AWPS, Aruppukottai against the accused. FIR was registered in Crime No.04 of 2022 for the



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offence under Section 6 of POCSO Act and Section 506(i) of IPC against the petitioner.

P.W.7 - Inspector of Police did investigation and laid charge sheet against the petitioner. The petitioner was charged for the offences under Sections 3 r/w 4 of POCSO Act and 506(i) of IPC.

(i) To prove the charge the prosecution examined 7 witnesses as P.W.1 to P.W.7 and marked 9 exhibits as Ex.P1 to Ex.P9. On the defence side one witness was examined and 6 exhibits were marked. No M.O was marked on both side. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 4(2) of the POCSO Act and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 20 years and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for a period of six months, however acquitted the petitioner for the offence under Section 506 (i) of IPC by passing impugned judgment dated 15.02.2023.

3. Aggrieved by the conviction judgment, the accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the appeal.

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



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5. The learned counsel for the petitioner has submitted that there is no clear evidence who wrote the complaint and there is no specific date and time about the occurrence. The complaint was lodged after two days. One Bhavani, with whom the victim narrated the incident, was not examined by the prosecution. Moreover, PW5 - Doctor deposed that there is no injury on the victim child. The Trial Court has not considered their evidences. The petitioner is suffering from Psoriasis and has been taking treatment. The petitioner has not committed any offence as alleged by the prosecution and he is in prison for more than 10 months. The petitioner has a fair chance in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Additional Public Prosecutor would submit that the defacto complainant is the mother of the victim girl lodged a complaint. The victim girl was 6 years old and she has clearly deposed identifying the accused and the offence committed by him. It is settled proposition of law, victim girl's evidence need not be corroborated. The petitioner is known person to victim as he was selling chicken in his hand cart near her grandmother house. Doctor evidence is clear about the sexual assault who deposed that hymen was not intact. The Trial Court has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. The petitioner was



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awarded sentence of imprisonment to 20 years and he is in prison only for 10 months.

Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. The petitioner stated that he has not committed any offence. Only on medical ground the petitioner seeks suspension of sentence. No other reasoned grounds raised for suspension of sentence. It is the further stand of the petitioner that the alleged Bhavani with whom the victim narrated the events was not examined by the prosecution. As argued by the learned Additional Public Prosecutor, in this nature of offence victim girl's evidence is sufficient. On perusal of records and judgment of the trial Court, it is clear that the evidence of the defacto complainant and victim girl as P.W.1 and P.W.2 was cogent and does not suffer from any infirmity. The Trial Court came to conclusion based on the evidence of prosecution side and medical evidence. The contention of the learned counsel for the petitioner raised in this petition is a matter for consideration in the appeal. The petitioner is in jail for a short period from 15.02.2023 against total period of sentence of 20 years.

8. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, this Court is not inclined to suspend the



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sentence at this stage and if he is released on bail, there is a possibility of making trouble to the victim girl in future and also this is not a fit case to exercise the jurisdiction of suspense of sentence.

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

sd/-

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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 POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT CAMP AT SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.



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

ORDER
IN
CRL MP(MD) No.15942 of 2023
in
CRL A(MD)No. 694 of 2023
Date :08/12/2023

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

Madurai Bench of Madras High Court is issuing certified
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