



CRL MP(MD) No.15869 of 2023

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

Tuesday, the Twelfth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15869 of 2023

in

CRL A(MD)No.444 of 2023

PUSHPARAJ

NOW CONFINED AT THE CENTRAL PRISON,
MADURAI. MADURAI DISTRICT.

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
SIVAKASI ALL WOMEN POLICE STATION,
SIVAKASI,
VIRUDHUNAGAR DISTRICT,.
CRIME NO.10/2022.

... 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 the Special Court for Exclusive Trial of Cases under the POCSO Act, Virudhunagar District at Srivilliputhur in Special SC No.99/2022 by the judgment dt.11.04.2023 and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER in CRL A(MD)No.444 of 2023:

To call for the records and set aside the judgment dated 11-04-2023 passed in Special S.C.No.99 of 2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur 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 Mr.N.PRAGALATHAN, 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 : 20.11.2023
Pronounced on : 12.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur in Spl.S.C.No.99 of 2022 by judgment dated 11.04.2023 and enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

On 05.06.2022 while the victim girl aged 15 years was lonely in her house at Muniyasamy Nagar, Thiruthangal, the petitioner trespassed into the house and pulled her left hand with sexual intention. On the basis of complaint given by her mother/P.W.1 FIR was registered in Crime No.10 of 2022 for the offence under Section 448 of IPC and Section 7 r/w 8 of POCSO Act, 2012. P.W.7 - Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offences under sections stated above.



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3. To prove the charge, the prosecution examined 7 witnesses as P.W.1 to P.W.7 and marked 8 exhibits as Ex.P1 to Ex.P8 and no MO was marked. On the defence side no witness was examined and no exhibit was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner guilty for the offence under Section 448 of IPC and Section 7 r/w 8 of POCSO Act, 2012 convicted and sentenced the petitioner to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of 3 months for the offence under Section 448 of IPC and also sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of 3 months for the offence under Section 7 r/w 8 of POCSO Act, 2012 and ordered the sentence of imprisonment to run concurrently by passing impugned judgment dated 11.04.2023.

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



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Petition.

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

6. The learned counsel for the petitioner has submitted that the victim was aged 15 years old at the time of occurrence. The defacto complaint/PW1 is a mother of the victim. The petitioner, who is aged 42 years is residing opposite to the house of the P.W.1. The petitioner has a son. The victim girl and the wife of the petitioner are working in the same place. The victim girl developed love affairs with the petitioner's son. Hence, the petitioner has been falsely implicated in this case. The allegation levelled against the petitioner is that he pulled the left hand of the victim with sexual intention, which is not attracted to Section 7. The PW1 is only hearsay witness. No eye witness was examined. The petitioner is in prison from 11.04.2023. The petitioner has a fair chance of succeed in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Additional Public Prosecutor would submit that the petitioner in inebriated condition with sexual intention pulled the hand of the victim, who was lonely in her house. The Trial Court has correctly appreciated the evidence and correctly passed the judgment convicting the accused as stated therein. Therefore, he strongly opposed to grant suspension of sentence and bail.



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8. 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. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that there was no eye witness; the PW2 is aged 15 years and Section 7 of POCSO Act would not attract and that the petitioner has a fair chance of succeed in the appeal. However, these are to be decided while deciding the appeal on merits. At the same time, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future. The petitioner is in prison from 11.04.2023. In the above circumstances and also considering the incarceration period of the petitioner, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-



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(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
20/11/2023

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

VSD

TO

1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



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2 THE INSPECTOR OF POLICE
SIVAKASI ALL WOMEN POLICE STATION,
SIVAKASI,
VIRUDHUNAGAR DISTRICT

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI, MADURAI DISTRICT.

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

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-17630[I] dated 12/12/2023)

ORDER
IN
CRL MP(MD) No.15869 of 2023
in
CRL A(MD)No.444 of 2023
Date :12/12/2023

SS/SAR- /12/12/2023/7P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023