



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

Friday, the Twentieth day of January Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.137 of 2023

IN

CRL A(MD) No.516 of 2022

MURUGESAN

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

THE STATE REP BY,  
THE INSPECTOR OF POLICE  
SEITHUR POLICE STATION,  
VIRUDHUNAGAR.  
(CRIME NO.59/2014).

... RESPONDENT/RESPONDENT/COMPLAINANT

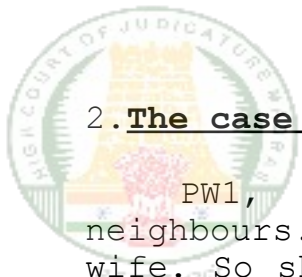
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner by the Learned Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur by its Judgment in Spl.SC.No.22/2020 dated .4/12/2021 and enlarge him on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD) No.516 of 2022 :

To call for the records of the impugned judgment made in Spl.S.C.No.22 of 2020 on the file of the Learned Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur dated 04.12.2021 and set aside the same.

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

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in S.S.C.No.22 of 2020, dated 04/12/2021 by the Special Court for exclusive trial of cases under POCSO Act, Virudhunagar and enlarge the petitioner on bail pending disposal of the criminal appeal.



## 2. The case of the prosecution in brief:-

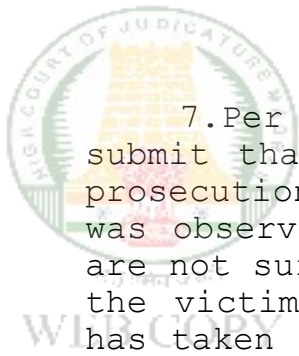
PW1, the father of the victim girl and the accused are neighbours. There was matrimonial issue between the accused and her wife. So she was living with her parental home. The victim girl was aged about 15 years. Since the accused is a neighbour, the victim girl was friendly with the accused. Taking advantage of the immaturity of the victim girl on 12/02/2014, at about 2.30 am, the accused person kidnapped the victim girl and took her to a Lodge by falsely stated that they are husband and wife and where she was subjected to penetrative sexual assault. Later she was taken to another place, where she was also subjected to similar offence. Based upon the above said occurrence, the case was originally registered as girl missing and later finding the involvement of this petitioner, the victim girl and the accused were secured and after completing the formalities of investigation, final report was filed.

3. To prove the prosecution case, on the side of the prosecution 20 witnesses have been examined and 12 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

4. At the conclusion of the trial, the trial court found that the prosecution has proved the case beyond all reasonable doubt and convicted the petitioner and sentenced him to undergo 10 years RI and imposed a fine of Rs.1,000/- with default clause for the offence under section 366 IPC and convicted for the offence under section 417 IPC and sentenced him to undergo one year RI and imposed a fine of Rs.1,000/- with default clause and also convicted and sentenced him to undergo seven years RI and imposed a fine of Rs.1,000/- with default clause for the offence under section 4 of POCSO Act. All sentences are ordered to run concurrently.

5. The earlier application was dismissed by this court considering the age of the victim girl and the manner of the offence that have been committed.

6. The learned counsel appearing for the petitioner would submit that some important aspect has not been brought to the notice of this court in the earlier petition. He would further submit that the age of the victim girl is 15 years. Even at the time of filing the FIR, no allegation of kidnapping has been made and only after securing the victim, alteration report was submitted by altering the statement of the victim girl to the effect that there is no evidence on record to show that the victim girl was staying along with the petitioner in Palani and Coimbatore; The evidence of the victim girl shows that there was no kidnapping. So section 366A IPC is not attracted and room bills were not seized by the Investigating officer. The medical evidence did not support the case of the prosecution.



7.Per contra the learned Additional Public Prosecutor would submit that the medical evidence clearly supports the case of the prosecution, since her hymen was not found to be in-tact. So this was observed by this court in the earlier petition also. But these are not sufficient enough to suspend the sentence. The immaturity of the victim girl has been taken advantage by the petitioner and he has taken the victim to several places and committed the above said penetrative sexual assault. I find no change of circumstance for allowing this petition.

8.In the result, this criminal miscellaneous petition is dismissed.

sd/-  
20/01/2023

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/02/2023  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

ER  
TO

- 1 THE SPECIAL JUDGE  
FOR EXCLUSIVE TRIAL OF POCSO ACT CASES,  
VIRUDHUNAGAR DISTRICT AT SRVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE  
SEITHUR POLICE STATION, VIRUDHUNAGAR.
- 3 THE SUPERINTEINDENT  
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL MP(MD) No.137 of 2023  
IN  
CRL A(MD)No.516 of 2022  
Date :20/01/2023

PKP/MMS/SAR-2/01.02.2023/3P/5C