



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

Thursday, the Nineteenth day of January Two Thousand and
Twenty Three

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PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL.M.P.(MD)No.16395 of 2022

in

CRL.A.(MD)No.715 of 2022

MUTHUKUMAR

... PETITIONER/APPELLANT/
ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SHOLVANDAN POLICE STATION,
MADURAI DISTRICT.
CRIME NO.515 OF 2017.

... RESPONDENT/RESPONDENT/
COMPLAINANT

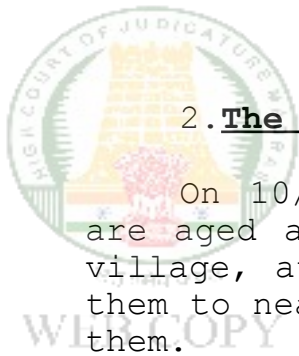
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed against the petitioner/appellant in S.S.C.No. 96 of 2018 by the Sessions Judge, Principal Special Court for exclusive trial of cases under POCSO Act, Madurai on 27.09.2022 and to enlarge the petitioner accused on bail, pending disposal of the Criminal Appeal.

Prayer in CRL A(MD)No.715 of 2022:

To call for the records and to set aside the judgment dated 27.09.2022 in S.S.C.No.96 of 2018 on the file of the Sessions Judge, Principal Special Court for exclusive trial of cases under POSCO Act, Madurai and acquit the appellant/accused.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MS. RAMASUBRAMANIAN.M, Advocate for the petitioner and of M/S.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend sentence imposed against the petitioner in S.S.C.No.96 of 2018, dated 27/09/2022 by the Sessions Judge, Principal 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 in brief:-

On 10/10/2017, at about 12.45 pm, when the victim girls, who are aged about 6 and 7 years playing near Vinayagar Temple in the village, at that time, the accused gave chocolates to them and took them to nearby area and removed their clothes and sexually assaulted them.

3. On the basis of the said occurrence, a case was registered and after investigation process, final report was filed. During trial process, on the side of the prosecution to prove the guilt of the accused, 17 witnesses were examined and 14 documents marked. On the side of the accused, none was examined and no document was also exhibited.

4. At the conclusion of the trial process, the trial court found the accused guilty of the offence under section 9(m) r/w 10(2 counts) of POCSO Act and sentenced him to undergo 5 years R/I for each count and imposed a fine of Rs.10,000/- for each count with default clause.

5. Challenging the above said sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed by the petitioner seeking suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that there is a delay of 7 days in lodging the complaint; even as per the evidence of PW5, the occurrence place is a public place, so the possibility of the occurrence is highly doubtful and even the age of the victim girls has not been properly fixed.

7. But the learned Additional Public Prosecutor would submit that there are two victims in the above said occurrence; so according to him, considering the gravity of the offence only, the earlier application was dismissed by this court, on 16/11/2022 and there is no change of circumstance. According to him, no ground has been made out by the petitioner to suspend the sentence.

8. Reading of the order passed by this court, on 16/11/2022, in Crl.MP(MD)No.13467 of 2022 in Crl.A(MD)No.715 of 2022 shows that the victims have given evidence in a cogent and convincing manner. The victims are very young in age. So considering the age of the victim girls, the above said petition was dismissed by this court in the earlier occasion. So I find no change of circumstances. If the petitioner is released on bail, there is every possibility of making trouble to the victim girls again. The the offence of this nature, must be viewed very seriously. So I find no reason to suspend the sentence.



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9.In the result, this criminal miscellaneous pet: **dismissed.** is

sd/-
19/01/2023

/ TRUE COPY /

/02/2023

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

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TO

- 1.THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE TRIAL OF
CASES UNDER POCSO ACT,
MADURAI
- 2 THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
- 3 THE INSPECTOR OF POLICE
SHOLVANDAN POLICE STATION,
MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL.M.P. (MD) No.16395 of 2022
in
CRL.A. (MD) No.715 of 2022
Date :19/01/2023

RK/BUC/SAR-1 (31/01/2023) 4P/5C