



CRL MP(MD) No.16261 of 2023

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

Wednesday, the Twentieth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.16261 of 2023

in

CRL A(MD)No.200 of 2023

R.RAMARAJ

... PETITIONER/ APPELLANT/ ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SATTUR

IN CRIME NO.13/2021. ... RESPONDENT/RESPONDENT/COMPLAINANT

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 execution of the substantial sentence to undergo 7 years RI, and to pay fine Rs.10,000/- and in default to undergo 3 months Simple Imprisonment for the offence punishable u/s.10 of POCSO Act passed against the petitioner/appeallant.

PRAYER in CRL A(MD)No.200 of 2023:

To call for records and set aside the order of conviction and sentence dated 09-2-2023 passed by the learned Special Judge for Trial of offences under POCSO Act, Virudhunagar District at Srivilliputhur in Spl.S.C.No.60 of 2021 for the charge under Section 10 of the POCSO Act to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo 3 month Simple Imprisonment and allow this Criminal Appeal, acquit the Appellant.



CRL MP(MD) No.16261 of 2023

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.M.MICHAEL BHARATHI, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

Reserved on : 23.11.2023

Pronounced on : 20.12.2023

The petitioner has filed this petition to suspend the execution of the sentence imposed against him in Spl.S.C.No.60/2021 on the file of the learned Special Judge for trial of offences under POCSO Act, Virudhunagar District at Srivilliputhur dated 09.02.2023 and to release him on bail till the disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

On 24.08.2021 when the victim child aged 10 years, was returning home from school, the petitioner/accused gave some rupees to the victim child and asked her to buy pickle, when she bought pickle, the petitioner/accused took her behind a water tank and squeezed her chest and private part. The victim child reached home with cry and narrated the incidents to her parents. The mother of the victim girl lodged a police complaint before the respondent All Women Police Station, Sattur. The respondent police registered FIR in Crime No.13 of 2021 for the offence under Section 9 (m) and 10 of POCSO Act against the petitioner. P.W.7 - Deputy



CRL MP(MD) No.16261 of 2023

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Superintendent of Police did investigation and laid charge sheet. The petitioner was charged for the offence under Section 10 of POCSO Act.

3. To prove the charge, the prosecution examined 7 witnesses as P.W.1 to P.W.7 and marked 11 exhibits as Ex.P1 to Ex.P7. No M.O. was marked. The petitioner/accused has not examined any witness and not marked any document. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 10 of POCSO Act and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for a period of 3 months by passing impugned judgment dated 09.02.2023.

4. 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.

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

6. The learned counsel for the petitioner has submitted that this is the third petition and already the petitioner filed CrI.M.P.(MD) No.4330 of 2023 and 10815 of 2023 and the same were dismissed on 12.05.2023 and 07.08.2023 respectively



CRL MP(MD) No.16261 of 2023

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considering the short period of incarceration. The alleged occurrence took place on 24.08.2021 between 1.00 p.m to 1.30 p.m. The FIR was registered on 27.08.2021 after 3 days delay. There was no proper explanation for the delay. The victim was examined on 28.08.2021 and no medical evidence supporting the prosecution case. P.W.1 / victim's mother deposed that staff of the child helpline came to her house on the occurrence day itself and they enquired for two days and thereafter she lodged a complaint. She further deposed that when she went to the police station to lodge a complaint, the accused was also there. The observation mahazar witness was turned hostile, the prosecution failed to establish the identification of the accused. The petitioner is 65 years and he is suffering from organic brain syndrome. The petitioner never committed any crime. The Trial Court has not properly appreciated the evidence and settled propositions of law and convicted the petitioner. There is no allegation of penetrative assault. The petitioner has a fair chance of succeed in the appeal. The petitioner is in prison for more than 9 months. The petitioner has family and to maintain his family. 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 appearing for the respondent has contended that the Trial Judge has elaborately discussed the contentions of the petitioner along with the oral and documentary evidence



CRL MP(MD) No.16261 of 2023

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adduced by the prosecution. The earlier two petitions were dismissed and there is no change in circumstances. The victim child clearly deposed against the petitioner/accused and there is no other reason for the victim child to depose evidence against the petitioner/accused. In nature of this case, the evidence of victim child is sufficient and no corroboration is necessary. The period of incarceration is immaterial. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

8. On hearing both side rival arguments and on perusal of records, it is clear that the FIR was registered after three days and from the evidence, it is clear that the staff from child care visited the victim house two days and they enquired the child and there is no allegation of penetrative sexual assault. The petitioner is an aged man and he is having brain disease as seen from medical certificate produced by him. However, the points in respect of delay in FIR and identification of accused are to be decided while deciding the appeal on merits. However, 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 as stated supra and further the criminal appeal is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison for nearly 10 months



CRL MP(MD) No.16261 of 2023

from the date conviction. In the above circumstances, 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 till the disposal of the appeal on the following conditions:-

(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 Special Judge for trial of offences 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 trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
20/12/2023

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20/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



CRL MP(MD) No.16261 of 2023

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TO

- 1 THE SPECIAL JUDGE FOR TRIAL OF
OFFENCES UNDER POCSO ACT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-18106[I] dated 20/12/2023)

ORDER
IN
CRL MP(MD) No.16261 of 2023
in
CRL A(MD)No.200 of 2023
Date :20/12/2023

SS/SAR- /20/12/2023/7P/6C

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