



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the Twelfth day of May Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.16502 of 2022

IN

CRL A(MD) No.889 of 2022

MURUGAN

... PETITIONER/APPELLANT

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
PETTAI POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.631 OF 2020.

... RESPONDENT/RESPONDENT

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 Petitioner in Spl.SC.No.101 of 2020 dt.23.11.2020 on the file of the Learned Special Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli and enlarge the Petitioner on bail pending disposal of the Appeal.

PRAYER IN CRL A(MD) No.889 of 2022:-

To call for the records and set aside the order of conviction and sentence passed in Spl.S.C.No.101/2020 dated 23.11.2022 on the file of the Learned Special Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli and allow this appeal and acquit the Appellants/Accused from the charge leveled against them.

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.AZAGARSAMY A.K., Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.Side) on behalf of the Respondents the court made the following order:-



RESERVED ON	26.04.2023
PRONOUNCED ON	12.05.2023

WEB COPY This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli, in Spl.S.C.No.101 of 2020, dated 23.11.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 20.06.2020 at about 05.30 p.m., when the victim child was eating biscuits in her house, the petitioner/sole accused entered into the house of the victim child and asked the victim child to give him biscuits, that when the victim child had refused to give, the petitioner hugged the victim child, that subsequently, the petitioner touched the private parts of the victim child and then pushed her down in a cot and started to touch various parts of the victim child, that when the victim child had informed him that she would shout and inform the incident to the owner, the petitioner left the house of the victim child and that on the basis of the complaint lodged, FIR came to be registered in Crime No.631 of 2020.

3. The respondent police, after completing the investigation, has laid the final report against the petitioner for the offences under Section 448 IPC and Sections 10 r/w 9(m) of POCSO Act.

4. During trial, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and exhibited 22 documents as Ex.P.1 to Ex.P.22. The defence has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 23.11.2022 convicting the petitioner for the offences under Section 451 IPC and Section 10 of POCSO Act and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment for the offence under Section 451 IPC and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months Rigorous Imprisonment for the offence under Section 10 of POCSO Act. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present appeal along with the above application for seeking suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that P.W.1-victim child in her cross-examination would depose that she never bought apalam from the petitioner, who is doing apalam business, but in chief examination she would say that they



have bought apalam from the petitioner and she knew about the petitioner, that P.W.1 and P.W.2 would admit that P.W.1's brother came with P.W.1 to the occurrence spot, but P.W.1's brother was not at all examined, that P.W.2 in her evidence would say that Ex.P.1 was written by police, whereas, P.W.1 would say that the same was written by her, that P.W.9 would say that she did not know, who has written the complaint, that though P.W.2 would depose in her evidence that the petitioner had touched the back part of the victim child, but that sentence was inserted in Ex.P.1, which was also admitted by P.W.9 and P.W.10, that though the incident was occurred at 05.30 p.m., but the complaint was lodged at 22.30 hours, that though FIR was registered at 22.30 hours on 20.06.2020, the same reached the Court only on 21.06.2020 at about 06.30 p.m. and that the prosecution has not offered any reason or explanation for the delay in lodging the complaint and sending the complaint.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the victim child informed the incident to her cousin Abinaya-P.W.3 and then to her mother-P.W.2, that P.W.1 along with P.W.2 and P.W.3 gave a complaint to the respondent police and on that basis, FIR came to be registered, that the prosecution has proved the foundational facts of the case and as such, it is for the petitioner to establish that he has not committed the offence, that testimony of the prosecutrix if found to be reliable that by itself is sufficient enough to convict the culprit and no corroboration of her evidence is necessary and that the trial Court, considering the evidence available on record, has rightly convicted the petitioner.

8. Considering the above facts and circumstances of the case and also the nature and gravity of the offence allegedly proved against the petitioner and also taking note of the age of the victim child and the period of incarceration and also the fact that the impugned judgment was passed only on 23.11.2022, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-
12/05/2023

/ TRUE COPY /

/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM



TO

1 THE SPECIAL JUDGE FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, TIRUNELVELI.

WEB COPY

2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

3 THE INSPECTOR OF POLICE,
PETTAI POLICE STATION,
TIRUNELVELI DISTRICT.

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

ORDER

IN

CRL MP (MD) No.16502 of 2022

IN

CRL A (MD) No.889 of 2022

Date :12/05/2023

NA/MMS/SAR-3/17.05.2023/4P/5C