



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.16504 of 2022

IN

CRL A(MD) No.890 of 2022

SHANMUGA RAJ

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KOVILPATTI,
THOOTHUKUDI DISTRICT
(CRIME NO. 1 OF 2019)

... 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 the petitioner and grant bail in the judgement dated. 15.12.2022 in **(*)S.S.C.No.36 of 2019** on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi pending disposal of the criminal appeal.

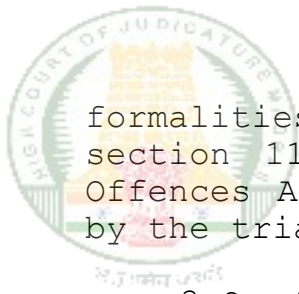
PRAYER IN CRL A(MD)No.890/2022:

Pleased to call for the records pertaining to the judgment dated 15.12.2022 in **(*)S.S.C.No.36 of 2019** on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi 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 MS/. EBENEZER.T.A, 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 sentence imposed against the petitioner in S.S.C.No.36 of 2019, dated 15/12/2022 by the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that the de-facto complainant, who is the father of the victim girl lodged a complaint stating that on 22/01/2019 at about 14.00 hours, when his minor daughter namely the victim girl was in the house, the accused came there with sexual intention and asked her to stay with him till 04.00 pm. Based on the complaint given by the de-facto complainant, FIR came to be registered in Crime No.1 of 2019 and after completing the



formalities of investigation, final report has been filed under section 11(i) r/w 12 of the Protection of Children from Sexual Offences Act, 2012 against the accused and it was taken cognizance by the trial court in SSC No.36 of 2019.

3. On the side of the prosecution, 16 witnesses were examined and 11 documents were marked. On the side of the accused, neither oral evidence nor documentary has been adduced.

4. At the conclusion of the trial, the trial court found the petitioner guilty and sentenced him to undergo 3 years R/I and imposed a fine of Rs.10,000/- with default clause for the offence under section 12 of the Protection of Children from Sexual Offences Act, 2012. Challenging the above said conviction and sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been seeking suspension of sentence.

5. Heard both sides.

6. Reading of the entire records and evidence does not indicate, whether there was any criminal intention on the part of the petitioner in inviting the victim girl to his house during the absence of the parents, whether it will amount to an offence punishable under section 12 of the POCSO Act is the only issue, got to be decided in the appeal.

7. Reading of the evidence of the victim and the mother of the victim girl shows that when the victim girl returned to the house from the school, the petitioner appears to have invited her to his house and stayed with him for some-time. The purpose for the invitation, as mentioned earlier, has not specifically spoken by the victim girl and the other witnesses.

8. It is also seen that the petitioner is residing on the back side of the victim house and there was some sort of issue between them on the previous occasion also. The trial court has convicted and sentenced the petitioner on the basis of the circumstantial evidence. Whether the above said circumstances will attract the offence, as mentioned above, is a matter for consideration in the appeal. Further no bad antecedent is also reported against the petitioner.

9. Considering the above said aspect and also considering the fact that it will take time to hear the main appeal for disposal, I am inclined to enlarge the petitioner on bail, by suspending the substantive part of sentence. Accordingly, the suspension of sentence petition is **allowed** and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-



WEB COPY

CRL MP(MD) N



22

(i) the petitioner is directed to be enlarged or bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi; and

(ii) on further condition that the petitioner shall appear before the said Court once in a week i.e., on the first working day of every week at 10.30 am pending appeal.

sd/-

20/01/2023

(*) Prayers amended as per order of this Hon'ble Court in CRL MP(MD).16504/2022 in CRL A(MD).890/2022 dated 31.01.2023
/ TRUE COPY /

/02/2023

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

er
TO

TO BE SUBSTITUTED WITH THE ORDER ALREADY DESPATCHED ON 23.01.2023

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

COPY TO:

THE ADDITIONAL SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

+1. C.C. to MS.EBENEZER.T.A Advocate SR.No.1503[I]

ORDER IN

CRL MP(MD) No.16504 of 2022
IN
CRL A(MD) No.890 of 2022
Date : 20/01/2023

SA/VR/SAR. /23.01.2023/3P/7C
RS/VR/SAR.1 (07.02.2023) 3P-7C