



CRL MP(MD) No.16873 of 2023

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

Thursday, the Fourteenth day of December Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI
CRL MP(MD) No.16873 of 2023
in
CRL A(MD) No.1063 of 2023

ASHOK @ ASHOK PRASATH

... APPELLANT/SOLE ACCUSED

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
THIRUMANGALAM, MADURAI.

2 THE INSPECTOR OF POLICE
THIRUMANGALAM ALL WOMEN POLICE STATION,
MADURAI DISTRICT.
CR.NO.01/2019

... RESPONDENT/COMPLAINANT

3 XXXXXXXX
XXXXXXX
XXXXXXX
Madurai District.

... RESPONDENT/VICTIM

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 Sentence imposed against the petitioner in Spl.S.C.No.64/2019 dt 23.06.2023 passed by the learned Additional Sessions Court for Exclusive Trial of cases under POCSO Act Madurai and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL A(MD) No.1063 of 2023 :

To call for the records in Spl.S.C.No.64 of 2019 dated 09.11.2023 passed by the Learned Additional Sessions Court for Exclusive Trial of cases under POCSO Act, Madurai and to set aside the same.



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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.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent Nos.1 & 2 and MR.R.JENIFAR BIBIN, Advocate on behalf of the 3rd Respondent, while admitting the Criminal Appeal, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.64 of 2019, dated 09.11.2023 passed by the Additional Sessions Court 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 is that the victim is aged about 16 years and studying 11th STD at the time of the alleged occurrence. On 30.01.2019 at 7.00 p.m., the petitioner called the victim by phone and asked her to come to the place of the occurrence and thereby kissed and touched the victim and sexually assaulted the victim under the false promise to marry her. The victim girl belonged to Scheduled Caste. Based on the complaint F.I.R. was registered in Crime No.01 of 2019 for the offence under Section 7 r/w 8 of POCSO Act 2012 and Section 3(1)(w)(ii) of SC/ST Act. After completion of investigation, final report was filed before the learned Additional Sessions Judge for Exclusive Trial of Cases under POCSO Act, Madurai and the same was taken on file in Spl.S.C.No.64 of 2019.

3. Before the trial Court, on the side of the prosecution, 13 witnesses have been examined as P.W.1 to P.W.13 and 15 documents were marked as Ex.P1 to Ex.P15. One



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Court document was marked as Ex.C1. On the defence side, no witness was examined and no exhibit was marked.

4. The learned Trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 09.11.2023 convicting the petitioner for the offence under Section 7 r/w 8 of POCSO Act and sentenced him to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of 6 months and for the offence under Section 3(1)(w)(ii) of SC/ST Act sentenced him to undergo rigorous imprisonment for a period of 6 months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month and ordered the sentence of imprisonment to run concurrently. Challenging the above said conviction and sentence, the petitioner preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that the petitioner paid the entire fine amount and the sentence of imprisonment passed against the petitioner has been suspended by the trial Court on 09.11.2023 for a period of 30 days and there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution



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witnesses and he prays to allow this petition.

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6. The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioners and hence, he strongly opposed to grant suspension of sentence.

7. The learned counsel for the third respondent/defacto complainant is present and he has no objection to allow this petition.

8. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

9. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The Trial Court suspended the sentence imposed against the petitioner on 09.11.2023 for a period of 30 days. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-



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(i) The petitioner/ Accused is directed to be enlarged on bail on condition that the petitioner/ Accused 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 Additional Sessions Court for Exclusive Trial of Cases under POCSO Act, Madurai;

(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/ Accused shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders.

sd/-
14/12/2023

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15/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

TO

1 THE ADDITIONAL SESSIONS COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, MADURAI.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
THIRUMANGALAM, MADURAI.

<https://www.mhc.tn.gov.in/judis>



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3 THE INSPECTOR OF POLICE,
THIRUMANGALAM ALL WOMEN POLICE STATION,
MADURAI DISTRICT.

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

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-17758[I] dated
14/12/2023)

ORDER IN
CRL MP(MD) No.16873 of 2023
in CRL A(MD) No.1063 of 2023
Date :14/12/2023

RS//SAR-(15.12.2023) 6P 6C
Madurai Bench of Madras High Court is issuing
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