



CRL MP(MD) No.852 of 2024

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

Friday, the Sixteenth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.852 of 2024

in

CRL.A(MD) No.372 of 2022

AGASTHIYAR

... PETITIONER/ APPELLANT/
SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.24 OF 2018.

... 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 sentence imposed on the petitioner by the Learned Special Court for exvlusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur by its judgment in Spl.S.C.No.3 of 2019 dt.08.04.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

Prayer in CRL.A(MD).372/2022:

Pleased to call for the records of the impugned judgment made in Spl.S.C.No.3 of 2019 on the filel of the Learned Special Court for exclusive trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur dated 08.04.2022 and set aside the same.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon

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perusing the petition filed in support thereof and upon hearing the arguments of Mr.M.JEGADEESH PANDIAN, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Special Judge for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur, in Spl.S.C.No3 of 2019 dated 08.04.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that there was an attempt to commit aggravated penetrative assault by the petitioner/accused on the victim child and thereby, a case has been registered against the petitioner in Crime No.24 of 2018, on the file of the respondent/Inspector of Police, A.W.P.S. Rajapalayam, Virudhunagar District, for the offences punishable under Section 363 of IPC and Sections 18 read with 6 r/w. 5(m) of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and the same was taken on file in Spl.S.C.No3 of 2019 before the learned Special Judge for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur. The petitioner was convicted and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- with six months Simple Imprisonment in case of default for the



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offence punishable under Section 342 of IPC. In respect of Section 18 r/w. 6 r/w. 5(m) of POCSO Act, the petitioner was convicted and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,000/- with six months Simple Imprisonment in case of default. The trial Court ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submits that in the brick-kiln there is no place to hide as alleged by the prosecution and the mother of the victim (P.W.1) has categorically stated in her evidence that there is no hidden place available in the scene of occurrence. He submitted that there is previous enmity between P.W.1 and the accused regarding functioning of brick-kiln. He further submitted that the victim child did not reveal the identity in the first instance, however, the child was tutored to make such a statement. Furthermore, there is no corroboration between the complaint and statement before the learned Judicial Magistrate, Rajapalayam. Likewise, there is no corroboration between prosecution witnesses and that the trial Court has also not considered the material contradictions. Learned counsel for the petitioner submitted that there is no adverse case registered against him and during trial, he was granted bail and he cooperated with the investigation and trial. Hence, the learned counsel prays for suspension of sentence of the petitioner.



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4. The learned Government Advocate (Crl. Side) appearing for the respondent police would submit that it is the case where the prosecution has proved the case beyond any reasonable doubt. Even this Court, earlier by its order dated 26.08.2022 has rejected the plea made on behalf of the petitioner to suspend the sentence and that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the State and perused the materials available on record.

6. This Court finds force in the submission of the learned counsel for the petitioner and 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, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur, in Spl.S.C.No.3 of 2019 dated 08.04.2022 alone is suspended, subject to the following stringent conditions:-

i) The petitioner shall execute a bond for a sum of Rs.25,000/-



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(Rupees Twenty Five Thousand only) with two blood sureties each for a like sum to the satisfaction of the learned Special Judge for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur;

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;

iii) The petitioner shall appear before the concerned Court daily at 10.30 a.m. and 5.30 p.m., till the disposal of the appeal.

iv) The petitioner shall furnish his residential address and mobile number to the Trial Court ie., learned Special Judge for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur.

v) On breach of any of the aforesaid conditions, the learned Special Judge for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur, is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Special Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]; and

vi) If the accused thereafter absconds, a fresh FIR can be



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registered under Section 229-A of IPC.

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8. Subject to the above conditions, this Criminal Miscellaneous Petition is allowed.

sd/-
16/02/2024

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20/02/2024
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN
TO

1 THE SPECIAL JUDGE FOR
EXCLUSIVE TRIAL OF POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
RAJAPALAYAM ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT.

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

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-1994[I] dated 16/02/2024)



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ORDER
IN
CRL MP(MD) No.852 of 2024
in
CRL.A(MD) No.372 of 2022
Date :16/02/2024

SA/SAR. /20.02.2024/7P/6C

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