



CRL MP(MD) No.808 of 2024

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

Friday, the Fifteenth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.808 of 2024

in

CRL A(MD) No.73 of 2024

S.BACKIANATHAN

... APPELLANT/SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
KALLAL POLICE STATION,
SIVAGANGAI DISTRICT,
CRIME NO.171/2019

... 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 and grant bail to the appellant/sole accused against the judgment dated 28.12.2023 in Spl.SC.No.46/2019 on the file of the learned Principal Special Court for Protection of Children from Sexual Offences Act(POCSO) 2012 Judge, Sivagangai in Crime No.171 of 2019 on the file of the Respondent Police pending disposal of the instant Criminal Appeal.

Prayer in CRL.A(MD)No.73/2024:

To call for the records of the Judgment dated 28.12.2023 in Spl.S.C.No.46 of 2019 on the file of the Learned Principal Special Court for Protection of Children from Sexual Offences Act (POCSO) 2012 Judge, Sivagangai for offences under sections 506 (i) of Indian Penal Code and Sec.8 r/w sec.7 of The Protection of Child from Sexual Offences Act, 2012 in Crime No.171 of 2019 on the file of the Respondent Police and set aside the same and Acquit the Appellant/Sole Accused.

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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.S.RAJASEKAR, 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 imposed on him by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai, in Spl.S.C.No.46 of 2019 dated 28.12.2023 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is submitted by the learned counsel for the petitioner that a case has been registered against the petitioner in Crime No.171 of 2019, on the file of the respondent/Inspector of Police, Kallal Police Station, Sivagangai District, for the offences punishable under Section 506(i) of IPC and 8 r/w. 7 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.No.46 of 2019 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai. The petitioner was convicted and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) for offence under Section 506(i) of IPC and to undergo five years simple imprisonment



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and to pay a fine of Rs.30,000/- (Rupees Thirty Thousand only) for offence under Section 7 r/w. 8 of POCSO Act. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Criminal Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submitted that the trial Court failed to consider that there was a contradiction in the statement of the victim girl as the time and place varies in her chief examination and 164 statement. He further submitted that the trial Court failed to note that the alleged eyewitnesses are interested witnesses as they are the family members. There is no evidence to prove the charge levelled against the petitioner and the prosecution has not established its case beyond reasonable doubts. Furthermore, due to previous enmity between the petitioner and the victim's family, a false complaint was lodged against the petitioner. The petitioner is in judicial custody from 28.12.2023. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Government Advocate (Crl. side) appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature. At the time of occurrence, the victim girl was a minor and hence, prays to dismiss the petition.

5. Heard the learned counsel appearing for the petitioner and the learned



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Government Advocate (Crl. side) appearing for the State and perused the materials available on record.

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6. This Court finds force in the submission of the learned counsel for the petitioner and hence, this Court is of the prima facie view that there are arguable points involved in this Criminal Appeal. Moreover, the petitioner has been incarcerated from 28.12.2023 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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai, in Spl.S.C.No.46 of 2019 dated 28.12.2023 alone is suspended, subject to the following stringent conditions:-

i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two blood sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai;

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;



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iii) The petitioner shall appear and sign 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 i.e., learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai.

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

sd/-
15/03/2024

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18/03/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM
TO
1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
SIVAGANGAI.

2 THE SUPERINTENDENT,
CENTRAL PRISION, MADURAI.

3 THE INSPECTOR OF POLICE
KALLAL POLICE STATION,
SIVAGANGAI DISTRICT,

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

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+1 CC to M/s.S.RAJASEKAR, Advocate (SR-3226[I] dated 15/03/2024)

ORDER
IN
CRL MP(MD) No.808 of 2024
in
CRL A(MD) No.73 of 2024
Date :15/03/2024

SA/SAR. /18.03.2024/6P/6C

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