



Crl.M.P.(MD) No.1809 of 2024

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

Tuesday, the Twelfth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) No.1809 of 2024
in
Crl.A(MD) No.291 of 2022

SURESHKUMAR

... PETITIONER/ APPELLANT

Vs

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

... RESPONDENT/RESPONDENT

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 by the learned Special Court for Exclusive Trial of cases under POCSO ACT cases Virudhunagar District at Srivilliputhur in Spl.S.C.No.51/2019 dt 25.03.2022 and enlarge the petitioner on bail till the disposal of the Criminal Appeal in Crl.A(MD)No.291 of 2022

Prayer in CRL A(MD).291/2022 :

To call for the records in Spl.S.C.No.51 of 2019 dated 25.03.2022 passed by the Learned Special Court for Exclusive Trial of Cases under POCSO Act Cases, Virudhunagar District at Srivilliputhur and to set aside the same.

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. MAYA PERUMAL, Advocate for the petitioner and of MR.A.THIRUVADIKUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



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The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur in Spl.S.C.No.51 of 2019 dated 25.03.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim girl was below 15 years and studying in 10th Standard at the time of occurrence. The petitioner/accused went to the victim girl's School and informed the victim girl that he would arrange for a scholarship from MLA fund for which photograph has to be taken to affix in the application. Hence, the victim girl went along with the accused in his two-wheeler. Thereafter, the accused, with the intention to commit sexual assault, has taken the victim girl to the secluded place and molested her. On the basis of information given by the victim girl, her mother lodged a complaint and based on the complaint, a case has been registered against the accused in Crime No.15 of 2019 for the offences punishable under Sections 294(b), 506(ii) of IPC and Sections 7, 8, 16 and 17 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] which was subsequently altered into Sections 8,



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13(A)(C) r/w. 14(4) and 17 of POCSO Act and the same was taken on file in Spl.S.C.No.51 of 2019 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur. The petitioner was convicted and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1000/- with 6 months Simple Imprisonment in case of default for the offence under Section 363 of IPC and to undergo 7 years imprisonment and to pay a fine of Rs.1000/- in default, to undergo 6 months Simple Imprisonment for the offences under Sections 8 r/w. 7 of POCSO Act and that the above sentences were ordered to be run concurrently. Challenging the above said conviction and sentence, the petitioner has preferred the present appeal along with this criminal miscellaneous petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that the victim girl after obtaining permission from her School has travelled along with the petitioner for nearly 2 kilometers in his bike without showing any resistance and thereby, the specific overtact alleged against the petitioner would not attract the provisions of Section 363 IPC. However, the Court below without taking into consideration the material aspect of the case had convicted the petitioner. He submits that the Court below failed to appreciate the evidence of victim girl in a proper perspective since the



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evidence of victim girl has no intrinsic value. Learned counsel further submitted that this is the fifth application filed by the petitioner before this Court and he has been incarcerated since from the date of judgment and conviction and the fine amount imposed by the trial Court has been paid and if the petitioner is released on bail, he is ready to abide any stringent conditions imposed by this Court and thereby, he prayed for bail.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner again came before this Court with the present application without any change of circumstances. He further submitted that the innocent girl has been kidnapped by the accused under the pretext of taking passport size photographs for arranging scholarship to the victim girl and thereby, she was subjected to sexual assault and hence, he prayed for dismissal of this petition.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.



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6. Considering the facts and circumstances of the case and taking note of the prolonged period of incarceration of the petitioner, 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, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.51 of 2019 dated 25.03.2022 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, Virudhunagar District at Srivilliputhur;

ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may



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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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur;

v) On breach of any of the aforesaid conditions, the learned Sessions Judge/Trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Sessions 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



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vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A of IPC.

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

sd/-
12/03/2024

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14/03/2024
Sub-Assistant Registrar (CS - IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

pkn

TO

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

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

3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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



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+1 CC to M/s.S.MAYA PERUMAL, Advocate (SR-3084[I] dated 12/03/2024)

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ORDER

IN

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in

Crl.A(MD) No.291 of 2022

Date :12/03/2024

RK (14/03/2024) 8P / 6C

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