



CRL MP(MD) No.3285 of 2024

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

Wednesday, the Twenty Third day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.3285 of 2024

in

CRL A(MD)No.226 of 2024

ROBERT BELARMIN

... APPELLANT/SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
AWPS NAGERCOIL,
KANYAKUMARI DISTRICT.
IN CRIME NO.21/2017.

... 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 Petitioners/Appellants passed in Spl SC No.14/2018 on the file of the Learned Special Court for Exclusive Trial Under POCSO Act Cases, Nagercoil dt.15.12.2023 and enlarge the petitioner on Bail pending disposal of the criminal appeal.

PRAYER in CRL A(MD)No.226 of 2024:

To call for the records in Spl.S.C.No.14 of 2018, on the file of the Learned Special Court for Exclusive Trial Under POCSO Act Cases, Nagercoil, and set aside the order of conviction and sentence dated 15.12.2023.

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.N.ANANTHA PADMANABHAN, Senior counsel for M/S.APN LAW



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ASSOCIATES, Advocate for the petitioner and of Mr.M.SAKTHI KUMAR, Government Advocate(Crl.side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Special Court for Exclusive Trial under POCSO Act Cases, Nagercoil, dated 15.12.2023 in Spl.S.C.No.14 of 2018 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution is that defacto complainant the victim lodged the complaint stating that her date of birth is 08.04.2001. After completion of 10th standard, she was staying in the house. The accused is her uncle. He promised to discharge all the loans of the family, if she marry him. On that ground she was kidnapped to Kulasekarapattinam, where she was performed marriage with the accused. She was taken to the accused's house thereafter. On 10.05.2017, she was subjected to sexual intercourse. Thereafter, she was taken to Velankanni, later to Thovalai and stayed in the house belonged to the accused's friend. Later they shifted the residence to Gurusadai, Nagercoil. Some one informed the police about the staying of the victim girl with the accused. On the basis of the information furnished by the public, the Child Welfare Officer visited the place of occurrence, where from



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they were secured. On the basis of the complaint given by the complainant, the case was registered. After completing the investigation, final report was filed, charge sheeting the accused for the offences under sections 366 of IPC, Section 9 r./w 10 of Prohibition of Child Marriage Act and Section 5(1) r/w 6 of the POCSO Act.

3.The case was tried by the Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Nagercoil, in Spl.S.C.No.14 of 2018. After committal process was over, the charges were made under sections sections 366 of IPC, Section 9 r./w 10 of Prohibition of Child Marriage Act and Section 5(1) r/w 6 of the POCSO Act.

4.On the side of the prosecution, 20 witnesses were examined and 18 documents marked. On the side of the accused one witness was examined and one document was marked.

5.At the conclusion of the trial process, the trial court found the appellant guilty for the offence under section 366 IPC and convicted and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five thousand only) in default, he shall undergo rigorous imprisonment for a period of 6



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months; also appellant found guilty for the offence under section 5(1) r/w 6 of the POCSO Act and convicted and sentenced to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.25,000/- (Rupees Twenty Five thousand only) in default, he shall undergo rigorous imprisonment for a period of two years and also appellant found guilty for the offence under section 9 r/w 10 of Prohibition of Child Marriage Act and convicted and sentenced to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.5,000/- (Rupees Five thousand only) in default, he shall undergo rigorous imprisonment for a period of six months. The sentence was ordered to run concurrently.

6. Against which, this appeal has been preferred by the appellant along with this petition seeking suspension of sentence.

7. The learned counsel for the petitioner submitted that the age of the victim girl was not properly established before the trial court. Even as per the records available, she was major on the date of alleged occurrence. But the trial court relied upon the Birth Certificate. When there are two contrary documents, the document one in favour of the accused must be taken into account. Moreover, it is submitted that it is arranged marriage between the victim and accused. Now there is no issue



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between the victim girl and petitioner herein. But, based upon the Child Information Cell, the case has been registered.

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8.Per contra, the learned Government Advocate (Crl. Side), the age of the victim was 15+ at the time of the occurrence. Knowing well that the victim is minor, the petitioner alleged to have perform marriage and subjected her to sexual intercourse.

9.Perusal of records shows that there are two contradictory evidence with regard to the date of birth of the victim girl. Even the statement of the victim girl does support the case of the petitioner that they performed the marriage and live in several places, whether the minority age of the victim girl was brought to the notice of the petitioner or not is the matter for consideration at the time of appeal.

10.In view of the above said and considering the period of incarceration, this Court is inclined to allow this petition.

11.In the result, Crl.M.P.(MD)No.3285 of 2024 in Crl.A(MD)No.226 of 2024 is allowed and the substantive sentence of imprisonment alone is suspended pending



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disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Nagercoil, and on further condition that he shall appear before the said Court once in a week at 10.30 am pending criminal appeal.

sd/-
23/10/2024

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23/10/2024

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

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TO

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



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+1 CC to M/s.M/S.APN LAW ASSOCIATES, Advocate (SR-12970[I] dated 23/10/2024)

ORDER
IN
CRL MP(MD) No.3285 of 2024
in
CRL A(MD)No.226 of 2024
Date :23/10/2024

SS/SAR- /23/10/2024/ 7P/6C

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