



CRL MP(MD) No.2928 of 2024

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

Wednesday, the Eleventh day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.2928 of 2024

in

CRL A(MD)No.714 of 2023

PANDI

... PETITIONER/ APPELLANT/ ACCUSED No.1

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR,
IN CRIME NO.4/2020.

... 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 enlarge the petitioner on bail by suspending the sentence imposed against the petitioner by the judgment dt.28.03.2023 made in Spl SC No.3/2021 on the file of the Honble Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur convicted the petitioner/appellant under section 6 of POCSO Act, 2012 and sentenced to undergo twenty years rigorous imprisonment and to pay a sum of Rs.1000/- as fine in default to undergo six month simple imprisonment and also convicted for the commission of offence under section 3(1)(w)(i) of the SC/ST Act and sentenced to undergo one year rigorous imprisonment and to pay a sum of Rs.1000/- as fine in default to undergo three month simple imprisonment pending disposal of the above Criminal Appeal.



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PRAYER in CRL A(MD)No.714 of 2023:

To call for the records and set aside the judgment of conviction and sentence of imprisonment dated 28.03.2023 passed in Spl.S.C.No.03 of 2021 on the file the Hon'ble Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur and acquit the appellant by allowing this appeal.

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.A.MOHAN, 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 against the petitioner in Special SC No.3 of 2021, dated 28/03/2023 passed by the Sessions Judge, Special Court for Exclusive Trial of POCSO Act cases, Virudhunagar District @ Srivilliputhur and enlarge him on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The de-facto complainant the father of the victim girl, lodged a complaint stating that the victim girl was aged about 15 years. She was disabled person. A1 is running a Tailoring shop in the village. A2 is his own brother. On 23/07/2020, the victim was taken to Sengundram Government Hospital for check up. At that time, after examining the victim girl, the Doctor told that she was pregnant. On enquiry, she told that the 1st accused Pandi and the de-facto complainant's brother namely



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Ganesah were responsible for it and they subjected her to forcible intercourse frequently. On the basis of the complaint given by the de-facto complainant, a case in Crime No.4 of 2020 was registered by the respondent police for the offences under sections 5(k), 5(l), 5(j)(ii), 5(n) and 6 of POCSO Act.

3.After completion of the investigation, the respondent police filed a final report for the offences under sections 5(k),(l),(n) r/w 6 of POCSO Act, 2012 and section 3(1)(w)(i), 3(2)(v) of SC/ST (POA) Amendment Act, 2015 and the same has been taken cognizance in Special SC No.3 of 2021 by the Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar @ Srivilliputhur.

4.Before the trial court, on the side of the prosecution, 11 witnesses were examined and 26 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the petitioner guilty of the offences and sentenced him to undergo 20 years RI and to pay a fine of Rs.1,000/-, in default to undergo 6 months SI for the offence under section 6 of POCSO Act, 2012; and sentenced to undergo one year RI and to pay a fine of



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Rs.1,000/-, in default to undergo 3 months SI for the offence under section 3(1)w(i) of SC/ST Act, 2015 and directed to run the sentences concurrently.

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6.Challenging the conviction and sentence, this appeal is preferred by the appellant. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A1 seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioner would submit that there is mis-identity; She was taken to various Primary Health Centres; Only on 23/07/2020, she was taken to Sengundram Government Hospital; There is a delay in lodging the complaint. It is admitted by PW1 himself that one another person by name Pandi also misbehaved with the victim girl; but no proper investigation was undertaken with regard to the above said allegation during the course of investigation; This petitioner due to mis-identity has been wrongly implicated.

9.Per contra, the learned Government Advocate (Criminal side) would submit that the victim girl was aged only 15+; She was disabled person; She was subjected to frequent sexual intercourse; so there is no question of mis-identity here; The accused was properly identified even during the course of the trial.



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10. Perusal of the records does not support the case of the petitioner. Because of the disability, the victim girl was not examined before the trial court. Only on the basis of the statement given by her to PW1 the father, the case was decided. But whether that is proper or not is a matter to be considered by this court at the time of hearing the appeal. But the medical evidence supported the case of the prosecution.

11. With regard to the identity of this petitioner, there is no material to support the case of the petitioner. Considering the age of the victim and her physical disability and the manner in which the above said offence said to have been committed, this court is not inclined to exercise the discretionary power in favour of the petitioner.

12. In the result, this criminal miscellaneous petition is **dismissed**.

sd/-

11/09/2024

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/10/2024

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

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TO

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



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2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR

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

+1 CC to M/s.I.SUTHAKARAN, Advocate (SR-11199[I] dated 11/09/2024)

ORDER
IN
CRL MP(MD) No.2928 of 2024
in
CRL A(MD)No.714 of 2023
Date :11/09/2024

SS/JGB/SAR- /10/10/2024/6P/5C

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