



CRL MP(MD) No.3460 of 2024

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

Wednesday, the Twentieth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.3460 of 2024

IN

CRL A(MD)No. 248 of 2024

SELVAM

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
THIRUCHITRAMBALAM POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.74/2017.

... 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 of Imprisonment imposed in Spl SC No.23/2019 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, dt.11.10.2023, and enlarge the Petitioner/ Appellant on bail, pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No. 248 of 2024:

To call for the records of the Court below and set aside the Judgment and conviction dated 11.10.2023 made in Spl.S.C.No.23 of 2019 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, and acquit the Appellant/3rd 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.DEENADHAYALAN, Advocate for the petitioner and of MR.M.MUTHUMANIKKAM, Government Advocate (Criminal Side) on behalf of the Respondent, while admitting the Criminal Appeal, 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, Thanjavur District, in Spl.S.C.No.23 of 2019 dated 11.10.2023 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/A3 and others in Crime No.74 of 2017, on the file of the respondent/Inspector of Police, Thiruchitrampalam Police Station, Thanjavur District, for the offences punishable under Section 109 r/w. 366 of IPC and that the same was taken on file in Spl.S.C.No.23 of 2019 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur District. The petitioner/A3 was convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) for offence under Section 109 r/w. 366 of IPC. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the



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above Criminal Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submitted that the trial Court failed to consider the victim girl's 164 statement before the Judicial Magistrate, in which she does not state anything about her date of missing and from where she was rescued. He further submitted that the trial Court failed to appreciate the fact that P.W.14-Doctor, who treated the victim girl on 04.05.2017 deposed that one unknown person said to have kidnapped the victim girl as per Accident Register-Ex.P.6. He also submitted that the trial Court failed to consider the fact that as per the evidence of P.W.10-Investigation Officer, no cell phone was recovered and no independent witnesses had been examined to prove the fact that there was nexus between A2, A1 and petitioner/A3 and the person, who rescued the girl was not arrayed as witness. He further submitted that the trial Court ought not have convicted the petitioner/A3 for the offence under Section 109 r/w.366 of IPC on the ground that he had induced the main accused to kidnap the victim girl merely because the petitioner is the father of A1. The petitioner is in judicial custody from 11.10.2023. This Court has granted suspension to A2, vide order dated 13.03.2024 passed in Crl.M.P.(MD) No.16749 of 2023 in Crl.A(MD) No.1053 of 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

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respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/A3 are serious in nature. He further submitted that the petitioner is A3 in this case. From the whole aspects, the trial Court properly consider that A1, with the help of A2 and the petitioner/A3, had abducted and committed the offence of aggravated penetrative sexual assault on the victim. 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 Government Advocate 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 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 11.10.2023 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.



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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, Thanjavur District, in Spl.S.C.No.23 of 2019 dated 11.10.2023 alone is suspended, subject to the following 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, Thanjavur District;

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 and sign before the concerned Court on the first working day of every English calender month at 10.30 a.m., until further orders.

iii) In case, if the petitioner is unable to appear before the Court on the 1st working day of a month, he shall appear on the next working day.



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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, Thanjavur District.

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

sd/-
20/03/2024

/ TRUE COPY /

21/03/2024
Sub-Assistant Registrar
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, THANJAVUR.
- 2 THE INSPECTOR OF POLICE
THIRUCHITRAMBALAM POLICE STATION,
THANJAVUR DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-3401[I] dated 20/03/2024)

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ORDER
IN
CRL MP(MD) No.3460 of 2024
IN
CRL A(MD)No. 248 of 2024
Date :20/03/2024

PKP/21.03.2024/ 7P/ 6C

Madurai Bench of Madras High Court is issuing certified
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