



Crl.MP(MD)No.3459 of 2024 in Crl.A(MD)No.247 of 2024

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G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special S.C.No.35 of 2022, dated 22/09/2023 passed by the Sessions Judge, Principal Sessions Court for Exclusive trial of cases under POCSO Act, Madurai and enlarge him on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim girl is aged about 6 at the time of the occurrence. On 26/10/2021, the victim girl was left in the custody of the de-facto complainant's elder sister by name Pandiselvi, since she was taking her son to the hospital. In the evening, she returned from the hospital and took the child. At that time, the child informed her that she suffering pain in her private part. On 03/11/2021, again the de-facto complainant about to go to her relative house. At that time, the victim girl refused to come. On enquiry, the victim girl revealed that the accused herein took her to his house and misbehaved with her by inserting his finger in her private part. On the basis of the complaint given by the mother of the victim girl, a case in Crime No.272 of 2021 was registered by the respondent police for the offences under section 342 IPC and sections 3(b),5(m)



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and section 6 of the Protection of Children from the Sexual Offence Act, 2012.

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3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.35 of 2022 by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.

4.On the side of the prosecution, 13 witnesses were examined and 15 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 1 years RI and to pay a fine of Rs.1,000/-, in default, to undergo 2 months SI for the offence under offence under section 342 IPC and; sentenced him to undergo 28 years RI and to pay a fine of Rs.1,00,000/-, in default to undergo 2 years SI for the offence under section 5(m) of the Protection of Children from Sexual Offences Act, 2012 r/w section 6 of the Protection of Children from Sexual Offences Act, 2012 and section 376-AB IPC and directed to run the sentences concurrently.



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 seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioner would submit that the victim girl is aged about 6 years and no complaint was made by the victim girl with her mother when the first occurrence took place; One Dharshini, who alleged to have taken the child was not examined on the side of the prosecution.

9.Per contra, the learned Additional Public Prosecutor would submit that the evidence of the victim girl supported by the Medical Officer evidence; There is sufficient indication and *prima facie* evidence that the victim girl was subjected to penetrative sexual assault using the finger.

10.The crime of this nature cannot be taken as lightly. Even though the petitioner is in the advanced age, his conduct misbehaviour dis-entitles him from claiming discretion of suspension of sentence.



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

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30/08/2024

Index : Yes/No
Internet: Yes/No

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To,

- 1.The Sessions Judge,
Principal Special Court for Exclusive
Trial of cases under POCSO Act cases,
Madurai.
- 2.The Inspector of Police,
Palamedu Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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