



CRL MP(MD) No.3362 of 2024

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

Thursday, the Twenty Eighth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.3362 of 2024

in

CRL A(MD) No.636 of 2022

MANIKANDAN

... PETITIONER/ APPELLANT/1st ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PATTUKOTTAI POLICE STATION,
THANJAVUR DISTRICT.

CRIME NO. 04/2017

... 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 suspend the sentence imposed on the petitioner / Appellant / Accused No.1 namely Manikandan S/o Karuppaiyan passed by the learned Principal Special court for Exclusive trial of cases under POCSO Act, Thanjavur in Spl SC No 36/2019 dt.30.09.2022 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL.A(MD).636/2022:

Pleased to call for the records and set aside judgment of conviction and sentence of imprisonment passed in Special Sessions Court Case No.36 of 2019, dated 30.09.2022 on the file of the Learned Principal Special Court for Exclusive Trial Case, Thanjavur by allowing this appeal.



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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 M.JEGADEESH PANDIAN, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur, in Spl.S.C.No.36 of 2019 dated 30.09.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the petitioner/accused trespassed into the house of the victim girl and sexually assaulted her under the guise of marrying her. On 19.06.2017, the victim was examined at the hospital and found pregnant and informed her mother that the accused is responsible for her pregnancy. When the mother of the victim questioned the accused for justice, the accused refused to marry the victim and abused her mother. It is pertinent to note that the accused Nadimuthu, by knowing the physical relationship with the accused herein, threatened the victim to have sex with him. Thereafter, he forcibly had sexual intercourse with the victim on several occasions during the month of December, 2016. While so, the victim gave birth to a male child and DNA result of the child of the victim proved that the biological father of the victim's child is Nadimuthu. However, a case has been registered against both the accused viz., the petitioner herein and



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Nadimuthu. It is also stated that the trial is split up in Spl.S.C.No.27 of 2021 as against the accused Nadimuthu, who is said to be the biological father of the victim's child.

The accused/petitioner appeared to have committed the offences punishable under Sections 417, 294(b) of IPC and Sections 6 r/w. 5(1) of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and the same was taken on file in Spl.S.C.No.36 of 2019 before the learned Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur. The petitioner was convicted and sentenced to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- with one year Rigorous Imprisonment in case of default for the offence punishable under Sections 6 r/w. 5(1) of POCSO Act. In respect of Section 417 of IPC, the petitioner was convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- with two weeks Rigorous Imprisonment in case of default. The trial Court ordered the sentences to run concurrently. Out of the fine amount, Rs.1,00,000/- was awarded as compensation to the victim girl. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submits that the trial court ought to have considered the fact that the prosecution never proved the ingredients of under Sections 11(iv) r/w. 12, 5(1) r/w. 6 of POCSO Act and 417, 294(b) of IPC. The



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medical report clearly reveals that the accused Nadimuthu, who is the uncle of the victim girl, had continuous sexual intercourse with the victim girl and that the DNA test also came with positive result. The said DNA report tally with the child's DNA result. However, the victim girl and her relatives foisted a false complaint against the petitioner alleging that he refused to marry the victim girl. Learned counsel for the petitioner submitted that the material omission about the involvement of accused Nadimuthu in the complaint not only affects the trustworthiness of her evidence but also affects the credibility of the victim's statement and thereby, prays for suspension of sentence of the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that admittedly the DNA test report of the accused herein is not tallied with the child's DNA result, however, the petitioner/accused has also committed the sexual assault upon the victim girl and hence, he strongly opposed to grant suspension of sentence.

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.

6. Considering the arguable points of the petitioner and the facts and circumstances of the case, this Court is of the prima facie view that the sentence is to



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be suspended pending this Appeal.

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7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur, in Spl.S.C.No.36 of 2019 dated 30.09.2022 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 Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur;

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 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 Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur.

v) On breach of any of the aforesaid conditions, the learned Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur, is



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entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Special 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

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/-
28/03/2024

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12/04/2024
Sub-Assistant Registrar
(C.S.I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN
TO
1 THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE TRIAL
OF CASES UNDER POCSO ACT,
THANJAVUR.

2 THE SPECIAL JUDGE FOR EXCLUSIVE
TRIAL OF POCSO ACT CASES,
THANJAVUR



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3 THE SUPERINTENDENT,
CENTRAL PRISON, THIRUCHIRAPALLI.

4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PATTUKOTTAI POLICE STATION,
THANJAVUR DISTRICT.

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

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-3984[I] dated 28/03/2024)

ORDER IN
CRL MP(MD) No.3362 of 2024
in
CRL A(MD) No.636 of 2022
Date :28/03/2024

SA/SAR. /12.04.2024/7P/7C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.