



CRL MP(MD) No.4763 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Friday, the Sixteenth day of February Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.4763 of 2023
in
CRL A(MD)No.225 of 2023

THANGAVEL

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
PERAVURANI POLICE STATION,
PUDUKOTTAI DISTRICT.
IN CRIME NO.1055/2020.

... 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 imposed on the petitioner in Spl.SC.no.50/2020 dt.7/2/2023 on the file of the Learned Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and enlarge him on bail pending disposal of the appeal.

PRAYER in CRL A(MD)No.225 of 2023:

To call for the records and set aside the order of conviction and sentence passed in Spl.S.c.No.50/2020 dated 07.02.2023 on the file of the Learned Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and allow this appeal and acquit the Appellants/ Accused from the charge leveled against them.

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/S.RAJAMANICKAM S, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-



CRL MP(MD) No.4763 of 2023

WEB COPY

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.50 of 2020 dated 07.02.2023 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 and thereby, a case has been registered against the petitioner in Crime No.1055 of 2020, on the file of the respondent/Inspector of Police, Peravurani Police Station, Pudukottai District, for the offences punishable under Section 451 of IPC and Sections 9(m) and 10 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.50 of 2020 before the learned Special Judge for Exclusive Trial of POCSO Act Cases, Thanjavur. The petitioner was convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/- with three months Rigorous Imprisonment in case of default for the offence punishable under Section 451 of IPC. In respect of Sections 9(m) and 10 of POCSO Act, the petitioner was convicted and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of



CRL MP(MD) No.4763 of 2023

Rs.10,000/- with six months Rigorous Imprisonment in case of default. The trial Court ordered the sentences to run concurrently. 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 there is previous enmity between the petitioner and the defacto complainant. So, the defacto complainant lodged the said complaint with an ulterior motive. He further submitted that there was a contradiction parallel to the evidence of P.W.1 before this Court and the statement given to the Doctor. Furthermore, the victim girl had not been examined internally and also no external injuries found on clinical examination. Likewise, there is no corroboration between prosecution witnesses and that the trial Court has not considered the material contradictions. Learned counsel for the petitioner submitted that he will adhere to any conditions imposed upon him and prays for suspension of sentence of the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would submit that it is the case where the accused had rubbed the leg of the victim girl and asked the victim girl to make promise not to disclose the



CRL MP(MD) No.4763 of 2023

same. This statement of the victim girl was recorded under section 164(5) of Cr.P.C.

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Moreover, there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the State and perused the materials available on record.

6. Considering the existence of previous enmity between the petitioner and the defacto complainant, nature of the offence and taking into consideration the age of the petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

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.50 of 2020 dated 07.02.2023 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;



CRL MP(MD) No.4763 of 2023

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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 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



CRL MP(MD) No.4763 of 2023

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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/-
16/02/2024

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20/02/2024
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN

TO

- 1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, THANJAVUR
- 2 THE INSPECTOR OF POLICE
PERAVURANI POLICE STATION, PUDUKOTTAI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



CRL MP(MD) No.4763 of 2023

+1 CC to M/s.S.RAJAMANICKAM, Advocate (SR-1969[I] dated 16/02/2024)

ORDER
IN
CRL MP(MD) No.4763 of 2023
in
CRL A(MD)No.225 of 2023
Date :16/02/2024

SS/SAR- /20/02/2024/7P/6C

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