



CRL MP(MD) No.4379 of 2024

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

Friday, the Sixteenth day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)No.4379 of 2024

in

Crl.A(MD)No.321 of 2024

GURUSAMY

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.
CR.NO.14/2021

... 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 passed by the learned Sessions court, Special court for POCSO Act cases, Virudhunagar District at Srivilliputhur in Special S.C No. 68/2021 dt. 31.03.2023 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

Prayer in Crl.A(MD)No.321 of 2024:

To call for the records and to set aside the judgment passed in Special S.C.No.68 of 2021 on the file of the Sessions Court, Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur, dated 31.03.2023.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.KANNAN.R.R, 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:-



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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Special SC No.68 of 2021, dated 31/03/2023 and enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

The victim girl is the neighbour of the accused. He misbehaved with the victim girl many time whenever she went to the house of Annalakshmi for suppling milk. More specifically on 21/02/2021, he physically touched, kissed her and committed rape repeatedly upon her on 08/03/2021, 25/04/2021 and 05/05/2021 in the staircase of the Muthlakshmi's house around 07.00 pm. It was intimated by the victim girl to the de-facto complainant, who is the mother. In this regard, a case in Crime No.14 of 2021 was registered.

3.After completion of the investigation, the respondent police filed a final report charge sheeting the accused for the offences under sections 363, 506(i) IPC and section 7 r/w 8 and 5(1) r/w 6 of POCSO Act, 2012 r/w 6 and 4(2) of the POCSO Act and the same has been taken cognizance in Special SC No.68 of 2021 by the Sessions Judge,

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Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur.

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4. On the side of the prosecution, 8 witnesses were examined and 13 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 accused guilty of the offence under section 363 IPC and section 6 of the POCSO Act. For the offence under section 363 IPC, sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months simple Imprisonment and for the offence under section 6 of the POCSO Act, sentenced him to undergo 20 years of rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 6 months simple imprisonment.

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.

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8. The learned counsel appearing for the petitioner would straightaway draw the attention of this court the Hon'ble Supreme Court judgment reported in Bhupatji Sartajji Jabrati Thakor Vs. The State of Gujarat (Special Leave Petition (Criminal) Diary No.27298 of 2024, dated 05/07/2024, as to the consideration while entertaining a petition for suspension of sentence fixed terms of imprisonment is imposed. He is referring to para 7 of the judgment, which reads as follows:-

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of the imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of re-appreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record.”



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9. By relying upon this para, he developed his argument stating that since the petitioner was convicted and sentenced to undergo for a fixed term of punishment, this court must entertain the suspension of sentence and must liberally view the matter. He would also submit that frequent misuse of the POCSO Act was also highlighted by this court in the judgment reported in Chellappan Vs. State represented by the Inspector of Police, Gandarvakottai Police Station, Pudukottai District (2016 SCC OnLine Mad 18107). On that account, he would submit that motive was suggested to the de-facto complainant over the false complaint. According to him, the husband of the de-facto complainant was affected by AIDS. That news was spread. But the accused was suspected for spreading the news. On that account only, this false complaint was lodged. Apart from that, he would also submit that the medical evidence did not support the case of the prosecution. He will be drawing the attention of this court to the Accident Register and Medical examination of the victim girl.

10. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent would submit that a young girl aged about 14 years was subjected to frequent sexual assault and that too penetrative sexual assault by the accused for several times. It was brought to the notice of the de-facto complainant belatedly. The accused being the married man and neighbour was charged with heinous crime. The



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charge was also proved by the prosecution. So, no indulgence need be shown to the accused.

11.Perusal of the medical report does indicate that hymen of the victim girl was not intact. No other external injuries were found on the private part of the victim girl. Whether this is sufficient enough to prove the repeated rape committed by the accused is a matter for consideration in the main appeal. A weak motive was suggested to the complainant, but the medical examination report supported the case of the prosecution that there is possibility of penetrative sexual assault.

12.So, considering the manner in which the offence said to have been committed, I am of the considered view that no discretion can be exercised in favour of the petitioner. Prima facie, the prosecution case is supported by medical evidence. On that account, this court is not inclined to suspend the sentence of the petitioner/Accused.

13.In the result, this criminal miscellaneous petition is dismissed.

sd/-
16/08/2024

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/09/2024

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

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1. THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR
2. THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.RR.KANNAN, Advocate (SR-10013[I] dated 16/08/2024)

ORDER
IN
CRL MP(MD) No.4379 of 2024
IN
CRL A(MD) No.321 of 2024
Date :16/08/2024

RK/VR (09/09/2024) 7P / 6C

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