



Crl.MP(MD)No.4802 of 2024 in Crl.A(MD)No.380 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 SC No.22 of 2017, dated 22/12/2022 passed by the Sessions Judge, Principal Special 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 a mentally retarded child. On 03/11/2014, the de-facto complainant namely PW1 noticed bleeding in the private part of the victim girl. She made enquiry, at that time, she came to know that the accused committed penetrative sexual assault on the victim girl. Based upon the occurrence, a case in crime No.35 of 2014 was registered by the respondent police for the offences under sections 376, 506(i) IPC and section 6 of POCSO Act @ 376 and 506(i) IPC and section 6 and 5(k) of POCSO Act.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.22 of 2017 by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.



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4.Before the trial court, on the side of the prosecution, 22 witnesses were examined and 17 documents were marked. Apart from that, 2 material objects 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 offences and sentenced him to undergo 10 years years RI and to pay a fine of Rs.5,000/-, in default, to undergo one year SI for the offence under offence under section 5(k) r/w 6 of the POCSO Act, 2012; and sentenced him to undergo one year RI and to pay a fine of Rs.1,000/-, in default to undergo 3 months SI for the offence under section 506(i) 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 has not supported the case of the prosecution; She was aged about 17 + at the



time of the occurrence; When the victim girl has not supported the case of the prosecution, the trial court rendered a finding without any evidence. So, suspension of sentence may be granted.

9.Per contra, the learned Additional Public Prosecutor would submit that the trial court recorded a finding on the basis of the statement of the victim girl. So, no indulgence need be shown.

10.The victim girl has stated about the sexual advancement made by the petitioner upon her. With regard to the motive suggested by the accused, there is no strong proof. During the course of cross examination, she has stated that he tried to misbehave with her, but nothing further was suggested by him. She was subjected to medical examination by PW13 Medical Officer and she has stated in her evidence that hymen was partly intact, which means hymen was not intact in full. So, this itself indicates that she was subjected to sexual assault.

11.Whether the motive suggested by the petitioner is probabalised is a matter for consideration at the time of hearing the appeal. Considering the age of the victim and also the mental illness, I am of the considered view that this is not a fittest case to enlarge the petitioner on bail by suspending sentence.



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

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04/09/2024

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,
Madurai.
- 2.The Inspector of Police,
AWPS, Melur,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J.,

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