



CRL MP(MD) No.5326 of 2024

WEB COPY

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

Thursday, the Twentieth day of June Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice K.K.RAMAKRISHNAN

CRL.M.P.(MD)No.5326 of 2024

in

CRL.A.(MD)No.437 of 2024

BABU

... PETITIONER/ APPELLANT/
ACCUSED 2

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
CHINNALAPATTI,
DINDIGUL DISTRICT.
CRIME NO. 65/2023

... 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 and fine passed by Learned Judge, Special Court for Exclusive Trial of cases under POCSO Act, Dindigul in Special S.C.No.302 of 2023 dated 02.01.2024 to enlarge the petitioner on bail till the disposal of the Criminal Appeal.

Prayer in Crl.A(MD).437/2024:

Pleased to call for records and to set aside the Conviction and Sentence passed by the Learned Judge, Special Court for Exclusive Trial of cases under POCSO Act, Dindigul in Special S.C.No.302 of 2023 dated 02.01.2024 and acquit the appellant herein.

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) No.5326 of 2024

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.MURUGESAN.I, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence and fine passed by learned Judge, Special Court for Exclusive trial of cases under POCSO Act, Dindigul in Spl.S.C.No.302 of 2023 dated 02.01.2024 to enlarge the petitioner on bail till the disposal of the Criminal Appeal.

2. The case of the prosecution is that the petitioner is A2 in Spl.S.C.No.302 of 2023. A1 in the said Spl.S.C. is facing charges under Section 6 of POCSO Act. The petitioner charges framed under Section 8 only. As per the allegation, the victim girl is aged about 13 years, she has no mother. In her father absence, A1, the victim entered into the house of A1 and A1 committed aggravated sexual assault on the victim girl and A2 trespassed into the victim house and made attempt to commit sexual assault. With the said allegation, FIR registered and the final report filed against him.

3. On receipt of the complaint, the respondent police registered the FIR in Crime No.65 of 2023 for the offences under Section 8 of POCSO Act, 2012.

4. The respondent police, after completing the investigation, has laid a final report for the offences under Sections 8 of POCSO Act, 2012 before the learned



CRL MP(MD) No.5326 of 2024

Judge, Special Court for Exclusive trial of cases under POCSO Act, Dindigul. The learned Special Judge has taken the case on file in Spl.S.C.No.302 of 2023 and thereafter, conducted trial as per procedure stated in code of Criminal Procedure.

5. During the trial, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and exhibited 19 documents as Ex.P.1 to Ex.P.19 and no Material Objects were marked, whereas, the accused has adduced neither oral nor documentary evidence.

6. The learned Special Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, convicted A1 for the offence under Section 6 of POCSO Act, 2012 and sentenced him to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default, to undergo one year Simple Imprisonment and the petitioner/A2 convicted to undergo 4 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo six months Simple Imprisonment under Sections 8 of POCSO Act, 2012. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. The learned Counsel for the petitioner submits that as per the allegation he only pulled her hands and fled the scene of occurrence. In the said allegation, the charge was framed. Even as per the allegation, the offence under Sections 8 of POCSO Act, 2012, is not made out. He would further submit that a number of contradictions



CRL MP(MD) No.5326 of 2024

between the evidences regarding the alleged occurrence. Even the allegation alleged against the petitioner is that he only pulled her hands. In the said circumstance, the offence is not made out against the petitioner. Hence, he seeks to grant of suspension of sentence to the petitioner.

8. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

9. This Court has carefully considered the rival submissions by either side and also perused the materials available on record.

10. Considering the findings that the petitioner said to have pulled her hands and he is in custody from 02.05.2023 and certain infirmities, inconsistencies and contradictions in material particulars brought to the knowledge of this Court, this Court prima facie feels that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future. Hence, this Court is inclined to grant of suspension of sentence. It is made clear that this Court specifically considering the overt act against this petitioner which is not applicable to the suspension of sentence relating to A1 who is facing aggravated penetrative sexual assault.

11. Accordingly, the relief of suspension of sentence is granted to the petitioner



CRL MP(MD) No.5326 of 2024

on the following conditions:-

WEB COPY

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judge, Special Court for Exclusive trial of cases under POCSO Act, Dindigul.

(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; and

(iii) The petitioner shall appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

sd/-
20/06/2024

/ TRUE COPY /

24/06/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RJR
TO
1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
DINDIGUL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) No.5326 of 2024

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
CHINNALAPATTI,
DINDIGUL DISTRICT.

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

+1 CC to M/s.I.MURUGESAN, Advocate (SR-6738[I] dated 20/06/2024)

ORDER IN
CRL.M.P.(MD)No.5326 of 2024
in
CRL.A.(MD)No.437 of 2024
Date :20/06/2024

SA/SAR. /24.06.2024/6P/C

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