



Crl.M.P.(MD) No.8250 of 2023

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

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

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) No.8250 of 2023

in

Crl.A(MD) No.440 of 2023

KANIRAJ

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KADAMBUR,
THOOTHUKUDI DISTRICT.
CRIME NO.1 OF 2018.

... 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 by the Special Court for Exclusive Trial of cases under POCSO Act,Thoothukudi in Spl.SC.No.1 of 2019 dt.29.12.2022 against Appellant and to enlarge the Petitioner/ Appellant on bail pending disposal of the above said Criminal Appeal.

Prayer in Crl.A(MD) No.440 of 2023:

To call for the records pertaining to the judgment passed by the Special Court for Exclusive Trial of cases under POCSO Act, Thoothukudi in Spl.S.C.No.01 of 2019 dated 29.12.2022 and set aside the same.

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



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of M/S.SIVAKUMAR P, Advocate for the petitioner and of MR.A.THIRUVADIKUMAR, 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 imposed on him by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi, in Spl.S.C.No.01 of 2019 dated 29.12.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is submitted by the learned counsel for the petitioner that a case has been registered against the petitioner in Crime No.1 of 2018, on the file of the respondent/Inspector of Police, All Women Police Station, Kadambur, Thoothukudi District, for the offences punishable under Section 9(m) r/w. 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.01 of 2019 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi. The petitioner was convicted and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) for offence under Section 9(m) r/w. 10 of POCSO Act. Challenging the above said



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conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Criminal Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submitted that the trial Court failed to note the fact that the place of occurrence which was said to be as asbestos house in Mahazar and by P.W.12 whereas in the cross examination of P.W.1, it was stated to be hut. He further submitted that all the witnesses examined are interested witnesses and there are contradictions between the evidences adduced and in 161 statement of P.W.1 to P.W.4. There is no evidence to prove the charge levelled against the petitioner and the prosecution has not established its case beyond reasonable doubts. The petitioner is in judicial custody from 29.12.2022. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Additional Public Prosecutor appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature. At the time of occurrence, the victim girl was a minor and hence, prays to dismiss the petition.



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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. This Court finds force in the submission of the learned counsel for the petitioner and hence, this Court is of the prima facie view that there are arguable points involved in this Criminal Appeal. Moreover, the petitioner has been incarcerated from 29.12.2022 and further the Criminal Appeal is not likely to be taken up for final hearing in the near future, 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 Sessions Judge, Special Court for Exclusively Trial of Cases under POCSO Act, Thoothukudi, in Spl.S.C.No.01 of 2019 dated 29.12.2022 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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi;



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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 and sign 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 i.e., learned learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi.

8. Subject to the above conditions, this Criminal Miscellaneous Petition is allowed.

sd/-
08/03/2024

/ TRUE COPY /

15/03/2024
Sub-Assistant Registrar (CS - IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

rm

TO

1.THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVELY TRIAL OF CASES UNDER POCSO ACT,
THOOTHUKUDI,

2.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KADAMBUR, THOOTHUKUDI DISTRICT.



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3.THE SUPERINTEDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

+1 CC to M/s.A.NARESH PRABU, Advocate (SR-3020[I] dated 11/03/2024)

ORDER IN
Crl.M.P.(MD) No.8250 of 2023
in Crl.A(MD) No.440 of 2023
Date :08/03/2024

RK (15/03/2024) 6P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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