



CRL MP(MD) No.8107 of 2023

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

Tuesday, the Sixth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.8107 of 2023

in

CRL A(MD)No. 435 of 2023

ANBALAGAN

... PETITIONER/ APPELLANT/ ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SRIVILLIPUTTUR,
VIRUDHUNAGAR DISTRICT.
CRIME NO.7 OF 2017.

... 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 imposed on the Petitioner in Spl.SC.No.21 of 2018 on the file of the Learned Special Judge for POCSO Act Cases, Virudhunagar District at Srivilliputtur dated.22.11.2022.

PRAYER IN CRL A(MD)435 of 2023:

Pleased to call for the records and set aside the judgment of conviction passed in SPL SC NO.21 of 2018 dated 22/11/2022 by the Learned Special Judge for Pocso Act Cases, Srivilliputhur, Virudhunagar District and allow this Criminal appeal.

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 MR.M.JEGADEESH PANDIAN, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Criminal Side) on behalf of the Respondents 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, Srivilliputhur, Virudhunagar District, in Spl.S.C.No.21 of 2018 dated 22.11.2022 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.7 of 2017, on the file of the respondent/Inspector of Police, A.W.P.S, Srivilliputhur, Virudhunagar District, for the offences punishable under Section 448 and 506(i) IPC and Sections 5(l) r/w 6, 5(j) (ii) r/w. 6 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.21 of 2018 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Srivilliputhur, Virudhunagar District. The petitioner was convicted for the offences punishable under Section 448 IPC and Sections 5(l) r/w 6 of the POCSO Act and sentenced to undergo 6 months rigorous imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in



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default, to undergo one month simple imprisonment for the offence under Section 448 IPC; and to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default, to undergo one year simple imprisonment for the offence under Sections 5(l) r/w 6 of the POCSO Act. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. The case of the prosecution is that the victim girl is a school drop out due to poverty. It is alleged that the petitioner has trespassed into the house of the victim and sexually assaulted her and also threatened her with dire consequences and further, it is alleged that two weeks later, he again forcibly had sexual intercourse with her. Due to which, the victim girl became pregnant. On 25.10.2017, she delivered a male born dead on foetus. Thereafter, on 28.10.2017, PW1 lodged a complaint against the petitioner to the respondent police.

4. The learned counsel for the petitioner submitted that except the evidence of PW1, there is no independent witness with regard to the occurrence. Though on the side of the prosecution PW2, PW3 and PW4 were examined, they are the close relatives of the victim girl. Hence, the learned trial Judge committed error in

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imposing conviction based on the interested witnesses of PW2, PW3 and PW4. He further submitted that though DNA test was conducted, it did not support the prosecution case in any manner. Therefore, medical evidence does not support the prosecution case and hence, the conviction imposed on the petitioner, cannot be sustained. Hence, the learned counsel prays for suspension of sentence of the petitioner.

5. The learned Government Advocate (Crl. Side) 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.

6. 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.

7. The learned counsel for the petitioner has raised substantial grounds in the appeal, which require detailed appraisal. Further, the petitioner has been in incarceration from 22.11.2022. Hence, this Court prima facie feels that there are



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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, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

8. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Srivilliputhur, Virudhunagar District, in Spl.S.C.No.21 of 2018 dated 22.11.2022 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, Virudhunagar District, Srivilliputhur;

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;

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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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Srivilliputhur, Virudhunagar District.

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

sd/-
06/02/2024

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07/02/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PJL

TO

1 THE SPECIAL JUDGE
FOR POCSO ACT CASES, SRIVILLIPUTHUR,
VIRUDHUNAGAR DISTRICT



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- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SRIVILLIPUTTUR,
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.M.JEGADEESH PANDIAN, Advocate (SR-1497[I] dated 06/02/2024)

ORDER
IN
CRL MP(MD) No.8107 of 2023
in
CRL A(MD)No. 435 of 2023
Date :06/02/2024

PKP/07.02.2024/ 7P/6C

Madurai Bench of Madras High Court is issuing certified
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