



Crl.MP(MD)No.7161 of 2023 in Crl.A(MD)No.372 of 2023,
Crl.MP(MD)No.11103 of 2023 in Crl.A(MD)No.642 of 2023 &
Crl.MP(MD)No.16766 of 2023 in Crl.A(MD)No.1055 of 2023

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G.ILANGOVAN, J

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed by the Sessions Judge, Special Court for POCSO Act cases, Virudhunagar, in Special Sessions Case No.122 of 2022, dated 31/03/2023 and enlarge the petitioners/A1 to A3 on bail, pending disposal of the above said Criminal Appeals.

2.The case of the prosecution brief:-

The de-facto complainant lodged a complaint stating that on 03/07/2022 her elder daughter namely the victim girl complained pain in her stomach. She was taken to Vadamalapuram Government Hospital from where she was referred to Government Hospital, Sivakasi. The Doctor examined her and informed that she was five months pregnant. On further enquiry, the victim girl has stated that her paternal uncle namely Vignesh is the reason for the pregnancy. Upon the occurrence, a case in Crime No.11 of 2022 under sections 5(1), 5(n), 5(k), 5(j)(ii) and 6 of the Protection of Children from Sexual Offence Act, 2012 was registered by the respondent police against the accused persons.



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3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.122 of 2022 by the Sessions Judge, Special Court for POCSO Act cases, Srivilliputhur.

4.On the side of the prosecution, 11 witnesses were examined and 15 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 all the accused guilty of the offence under section 6 of the POCSO Act, 2012 and sentenced them to undergo 20 years rigorous imprisonment each and to pay a fine of Rs.1,000/-, in default to undergo 6 months SI each.

6.Challenging the conviction and sentence, these appeals are preferred by the appellants/A1 to A3. Pending appeal, these criminal miscellaneous petitions were taken out by the petitioners/A1 to A3 seeking suspension of sentence.

7.Heard both sides.



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8.The learned counsel appearing for the petitioners would straightaway rely upon the DNA report, which is indicated the exclusion of these petitioners from the paternity. It is submitted that several persons were implicated in this case without any basis reasons; The evidence of PW2 is also unbelievable.

9.The learned Government Advocate (Criminal side) would submit that the victim girl identified the accused and the interpreter was appointed, since the victim girl was mentally ill person. So, no indulgence need be shown.

10.We will straightaway go to the DNA report submitted by the prosecution, which is marked as Ex.A15, wherein the operative portion runs like this:-

"From the DNA typing results of the above samples, it is found that

(i)The gender of the Foetus (of ref.2) is male.

(ii)The Alleged Accused-1 Mr.Vignesh, the Alleged Accused-2, Mr.Alexpandian and the Alleged Accused-3.Mr.Manikandaraja are excluded from the paternity of the male Foetus (of ref.2)"



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11. When the possibility of paternity of these persons is excluded, the trial court believed the oral evidence of the victim girl. Through the interpreter, the preliminary enquiry was made by the trial court and after satisfying the mental and physical capacity, through him she was examined. She identified one Karuvayan, Vikky and Alex. It is stated that they misbehaved nasty with her. Alex promised to marry and she was taken to the bushes area where they misbehaved, so also some other persons Rajakumar, Selva and Suriya. But they are not arrived as accused. So, appreciation of the evidence of PW2 requires proper approach.

12. Whether it is safe to conviction and sentence a person based upon the evidence of victim is only point to be decided in the main appeal more specifically in the light of the DNA test.

13. Considering the above said facts and circumstances of the case and the period of incarceration and also considering the fact that there are arguable points involved in these criminal appeals and further the criminal appeals are not likely to be taken up for final hearing in the near future, these criminal miscellaneous petitions are **allowed** and the substantive sentence of



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imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that they shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the Sessions Judge, Special Court for POCSO Act Cases, Virudunagar District at Srivilliputhur and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.30 am until further orders.

26/09/2024

Index : Yes/No

Internet: Yes/No

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To,

- 1.The Sessions Judge,
Special Court for POCO Act cases,
Virudhunagar District @ Srivilliputhur
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.
- 4.The Superintendent,
Central Prison, Madurai.



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