



CRL MP(MD) No.7465 of 2023

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

Tuesday, the Twenty Third day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.7465 of 2023

in

CRL A(MD) No.367 of 2023

PON SUNDAR

... Petitioner / Petitioner

Vs

THE INSPECTOR OF POLICE
AALVARKURICHI POLICE STATION,
TIRUNELVELI DISTRICT.
(CRIME NO.64/2017).

... 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 enlarge the petitioner on bail by suspending the sentence imposed upon the petitioner in Special Sessions Case No.103 of 2019 on the file of the learned Sessions Judge Special Court for POCSO ACT Cases, Tirunelveli, Tirunelveli District and by Judgment dated 24.01.2023 pending disposal of the main criminal appeal.

Prayer in CRL A(MD) No.367 of 2023:

To call for the records in Special Sessions Case No.103 of 2019 on the file of the Leanred Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, Tirunelveli District and set aside the judgment dated 24.01.2023 and acquit the appellant of the charges leveled against him.

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.SURESH KANNAN.C, Advocate for the petitioner and of Mr.M.MUTHU MANIKKAM, Government Advocate (Crl. side) on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli, in Spl.S.C.No.103 of 2019 dated 24.01.2023 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is the case of the prosecution that on 16.04.2017, the victim girl went to a function and she did not return to her home. Thereafter, the father of the victim girl preferred a complaint before the respondent police and based on that complaint, a case has been registered for 'Girl Missing' in Crime No.64 of 2017, on the file of the respondent/Inspector of Police, Alvarkurichi Police Station, Tirunelveli District. After the investigation, it came to light that the petitioner/accused has taken her to his relative's house at Karur and had sexual relationship with her. The respondent police altered the FIR in Crime No.64 of 2017 from 'Girl Missing' to Sections 366(A) of IPC and Section 6 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and that the same was taken on file in Spl.S.C.No.103 of 2019 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli. The



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petitioner was convicted and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- with six months Rigorous Imprisonment in case of default. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that the occurrence took place on 16.04.2017 and the FIR has been registered only on 20.04.2017 and therefore, no proper explanation was given for the delay of registration of FIR by the prosecution. The specific contention of the learned counsel for the petitioner is that that the evidence of P.W.8 (Dr.Roselyn) and Ex.P.7 (Medical Report) which adduced by the prosecution runs contra to the very basis of the case. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. 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.

5. 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.

6. This Court finds force in the submission of the learned counsel for the



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petitioner. On due consideration of the facts and circumstances of the case and having meticulously perused the evidence on record, without expressing any opinion on merits of the case, 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 Exclusive Trial of Cases under POCSO Act, Tirunelveli, in Spl.S.C.No.103 of 2019 dated 24.01.2023 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, Tirunelveli;
- 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 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



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Court for Exclusive Trial of Cases under POCSO Act, Tirunelveli.

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

sd/-
23/01/2024

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24/01/2024
Sub-Assistant Registrar
(C.S. I / II / III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN

To

1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Tirunelveli.

2.The Inspector of Police,
Aalvarkurichi Police Station,
Tirunelveli District.

3.The Superintendent,
Central Prison,
Palayamkottai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.SURESH KANNAN, Advocate (SR-902[I] dated 23/01/2024)



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ORDER
IN
CRL MP(MD) No.7465 of 2023
in
CRL A(MD) No.367 of 2023
Date :23/01/2024

ED/ /SAR- (24/01/2024) 6P / 6C

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