



CRL MP(MD) No.10003 of 2023

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

Friday, the Twenty Fifth day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.10003 of 2023

in

CRL A(MD) No.522 of 2023

A.PALANIKUMAR

... PETITIONER/ APPELLANT/ SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
TIRUCHENDUR.

(CRIME NO.16 OF 2015)

... RESPONDENT/ RESPONDENT/ COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the execution of sentence by granting bail in Spl.S.C.No.145/2019 dated 10.03.2023 on the file of the Special Court for POCSO Act Cases Thoothukudi District, till the disposal of this Criminal Appeal.

Prayer in CRL A(MD) No.522 of 2023 :

To admit the Appeal on file, and to call for the records from the Learned Special Court for POCSO Act Cases, Thoothukudi District in Spl.S.C.No.145/2019 dated 10.03.2023 and set aside the same and to acquit the appellant/accused.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, Senior Counsel for MR.P.SUBBIAH, Advocate for the petitioner and of MR.M.SAKTHI KUMAR, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-



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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special S.C.No.145 of 2019, dated 10.03.2023 by the Special Court (Protection of Children from Sexual Offences Act Cases), Thoothukudi and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that the defacto complainant lodged a complaint stating that the victim girl was aged about 17+ at the time of occurrence. On 11.11.2015, the victim girl was found missing. She was attending school from her sister's house. So she lodged a complaint before the Thattarmadam Police Station. On the next day of the complaint, one Sundar informed her that the victim girl is standing in Tirunelveli Bus Stand. In was informed to the Police Station and police secured the victim girl. She was sent to the Child Welfare Home. During the course of investigation it was found that this accused under the false promise of marriage, kidnapped the victim girl to various places and subjected her to forcible sexual intercourse. Based on the complaint lodged by the defacto complainant, case was registered and final report was filed before the concerned Court and taken cognizance.

3.During the course of trial, on the side of the accused, 20 witnesses examined and 14 documents were marked. No material object was marked. On the side of the accused, no oral or documentary evidence was adduced.



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4. At the conclusion of the trial, the trial court found the accused guilty and accordingly, convicted and sentenced him to undergo seven years Rigorous Imprisonment and also pay a fine of Rs.10,000/- with default clause for the offence under section 3 r/w 4 of the POCSO Act; and acquitted the accused from the charge under Section 366 of IPC.

5. Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by the petitioner.

6. Heard both sides.

7. The learned counsel for the petitioner would submit that the age of the victim girl was 17+ at the time of occurrence. She was already having love affair with two persons. Later developed intimacy with this petitioner also. According to him, it is a love affair between the petitioner and victim girl.

8. Per contra, the learned Government Advocate (Crl. Side) would submit that the victim was minor at the time of occurrence. On the false promise of marriage, she was kidnapped to various places and subjected to forcible sexual intercourse.

9. The victim girl was examined as PW3. She has stated that on 10.12.2015, the accused asked her to come to Tirunelveli. Where from, she was taken to Oothumalai and thereafter to Annamalai Pudur and later taken to his sister's house. During the



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night time she was subjected to forcible sexual intercourse. She was not cross examined by the accused. The victim girl was subjected to medical examination. At that time, it was found that the hymen was not intact. Why the victim girl was not cross examined by the accused is not clear. But the fact remains that it was contended before the trial Court that the victim girl had affair with two persons. So far as this petitioner is concerned, he is no way involved and connected with the affairs. As mentioned above, why the victim girl was not cross examined by the accused was not clear on record. There is a clear indication by the victim girl about the involvement of this petitioner. Now it has been stated that the petitioner also having love affair with the victim girl. Which one is correct is the matter for consideration at the time of appeal. Whether the matter requires any remand also to be considered at the time of appeal.

10. On that ground and also considering the period of incarceration, this Court is inclined to allow this petition.

11. In the result, Crl.M.P.(MD)No.10003 of 2023 in Crl.A(MD)No.522 of 2023 is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the



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learned Sessions Judge, Special Court (Protection of Children from Sexual Offences

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Act Cases), Thoothukudi and on further condition that he shall appear before the said

Court once in a week at 10.30 am pending criminal appeal.

sd/-

25/10/2024

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25/10/2024

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

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TO

1 THE JUDGE,
SPECIAL COURT
(PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT CASES),
THOOTHUKUDI.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
TIRUCHENDUR.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

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

+1 CC to M/s.P.SUBBIAH, Advocate (SR-13205[I] dated 25/10/2024)



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ORDER
IN
CRL MP(MD) No.10003 of 2023
in
CRL A(MD) No.522 of 2023
Date :25/10/2024

RS//SAR-(25.10.2024) 6P 6C
Madurai Bench of Madras High Court is issuing
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