



CRL MP(MD) No.7472 of 2024

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

Wednesday, the Twenty Eighth day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.7472 of 2024

IN

CRL A(MD) No.623 of 2024

V.ABIN VIJAY

NOW CONVICT PRISON NO.5627,
CENTRAL PRISON,
PALAYAMKOTTAI

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
KOLLENCODE POLICE STATION,
KANYAKUMARI DISTRICT,
CRIME NO.07/2017

... 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 suspend the sentence imposed by the Special Court of Protection of Children from Sexual Offences Act and Mahila Court, Nagercoil in Spl.SC.No.25/2017 dt 20.06.2024 and enlarge the petition on bail pending disposal of the Crl.A

PRAYER in CRL A(MD)No.623 of 2024:

To call for the records pertaining to the judgment in Spl.SC.No.25 of 2017 dated 20.06.2024 passed by the Special Court of Protection of children from Sexual Offences Act, Mahila Court, Nagercoil and allow this Criminal appeal and to set aside the conviction and sentence imposed as against the Appellant/ Accused No.1.



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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 of Mr.M.R.SREENIVASAN, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Sessions Judge, Special Court for Protection of Children from Sexual Offences Act and Mahila Court, Nagercoil, in Special Sessions Case No.25 of 2017, dated 20/06/2024 and enlarge the petitioner/A1 on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

The victim girl was studying + 1 in Kollankodu Government Higher Secondary School. The accused namely Abin Vijay was also studying in the same school. Originally, they were friends. Later, the petitioner herein was telling her that he is in love. When that was intimated to her parents, they arranged marriage with



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some other boy. She, in turn, intimated the same to the accused. He promised her to marry. On 11/11/2016 at about 08.00 am, she was taken by the accused to the Thiruvananthapuram and to various places. Later, she was taken to the house, where she was subjected to forcible sexual intercourse. Later, that was intimated to her mother. She was taken to the house of the accused and stayed in the house from 13/11/2016 to 03/01/2017. During that time, she demanded registration of marriage. They asked her to collect school certificate and sent out of the house. She returned to her parental home. On 31/01/2017, she complained pain in the stomach region, taken to the hospital. At that time, the complaint was registered in Crime No.7 of 2017 by the respondent police for the offences under sections 366(A), 376, 506(i)IPC and section 6 of the Protection of Children from Sexual offences Act, 2012 and section 4 of the Tamil Nadu Protection of Harassment of Women Act, 1998.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.25 of 2017 by the Sessions Judge, Special Court for Protection of Children from Sexual Offence Act and Mahila Court, Nagercoil.

4.On the side of the prosecution, 16 witnesses were examined and 18



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documents were marked. On the side of the accused, 5 witnesses were examined and 2 documents were marked.

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5.At the conclusion of the trial process, the trial court found the petitioner/A1 guilty of the offences and sentenced him to undergo 20 years SI with a fine of Rs.5,000/-, in default to undergo 2 years SI for the offence under section 5(1) r/ 6 of the POCSO Act; and sentenced to undergo 2 years SI with a fine of Rs.500/- in default to undergo 3 months of SI and directed all the sentences to run concurrently.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant/A1. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A1 seeking suspension of sentence.

7.The learned counsel appearing for the petitioner would submit that it is out and out love affair between the victim girl and the petitioner herein; The date of birth of the victim girl is 25/09/1999 as per the prosecution case, but Crl.MP(MD) No.8276 of 2024 is filed by the petitioner to accept the additional evidence namely birth certificate and the Aadhar Identity Card of the victim girl, wherein the date of birth of the victim girl is stated as 09/10/1998 and the in the Aadhar Identity Card,



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the date of birth is mentioned as 25/09/1998. The date of occurrence, as per the prosecution is 11/12/2016. It is seen that she was three months for attaining the majority. Even as per the complaint and the statement given by the victim girl, it is seen that for performing the marriage, she was asked to collect the school certificate. What happened between them is a matter for consideration in the main appeal.

8. According to the petitioner, the victim girl was major at the time of the occurrence and there was a consensual affair and love affair. But contra evidence is let by the prosecution with regard to the correct date of birth of victim girl. Which one is correct is a matter for consideration in the main appeal.

9. Considering the above facts and circumstances of the case and the period of incarceration and also considering the fact that there are 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 criminal miscellaneous petition is **allowed** and the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Special Court for Protection of



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Children from Sexual Offences Act and Mahila Court, Nagercoil and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 am until further orders.

sd/-
28/08/2024

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28/08/2024
Sub-Assistant Registrar(AD II)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT OF PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, MAHILA COURT, NAGERCOIL.
 - 2 THE INSPECTOR OF POLICE
KOLLENCODE POLICE STATION,
KANYAKUMARI DISTRICT
 - 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.M.R.SREENIVASAM, Advocate (SR-10519[I] dated 28/08/2024)



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ORDER
IN
CRL MP(MD) No.7472 of 2024
IN
CRL A(MD) No.623 of 2024
Date :28/08/2024

SS/SAR- /28/08/2024/7P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023