



CRL MP(MD) No.10156 of 2023

WEB COPY

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

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

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.10156 of 2023

in

CRL A(MD) No.447 of 2023

THANGAPANDI

... Petitioner / Appellant / Accused

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PUDUKOTTAI, TUTICORIN,
TUTICORIN DISTRICT.
(CRIME NO. 02/2018.)

... 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 passed by the POCSO Exclusive Court, Tuticorin, Tuticorin District in Special SC No.116/2019 through a Judgment 25.03.2023.

Prayer in CRL A(MD) No.447 of 2023:

To admit this appeal on file and call for records in Spl.S.C.No.116 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin, Tuticorin District and to set aside the judgment dated 25.03.2023 passed in Spl.S.C.No.116 of 2019 by the above lower Court and thereby acquit the above accused from the charges.

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



CRL MP(MD) No.10156 of 2023

of M/S.RAAMAKRISHNAN.KA, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

RESERVED ON : 14.12.2023

PRONOUNCED ON : 05.01.2024

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin, Tuticorin District, in Spl.S.C.No.116 of 2019, dated 25.03.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 04.03.2018, at about 9.30 a.m., when the victim's mother went to the houses, where she was working as a servant maid and the victim was alone in her house and standing in front of her house, the accused came there and called the victim that he would give Rs.100/-. The victim replied to the accused that her mother told her not to receive money from anyone and in spite of that the accused grabbed the hand of the victim and took her beneath to the stairs of Selvam's newly constructed house and lifted the victim's petticoat with his hand and the accused told the victim to put the 100 Rupees currency note inside the inner wear of the victim and when the victim said no, the accused touched the private part of the victim and after the arrival of victim's mother, the victim narrated the incident to her mother and based on the complaint given by her



CRL MP(MD) No.10156 of 2023

mother, a case was registered against the petitioner by the respondent police in Crime No.2 of 2018 for the offences under Sections 9(m) r/w 10 of the Protection of Children from Sexual Offences Act, 2012.

3. The respondent police, after completing the investigation, filed the final report and the case was taken on file in Spl.S.C.No.116 of 2019 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin, Tuticorin District

4. During trial, the prosecution has examined 16 witnesses as P.W.1 to P.W.16, exhibited 10 documents as Ex.P.1 to Ex.P.10. No material objects was marked. The defence have adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 25.03.2023 convicting the petitioner and sentenced him as follows:

S.No.	Offence	Sentence	Fine	In default sentence
1.	9(m) r/w 10 of the Protection of Children from Sexual Offences Act, 2012.	seven years of Rigorous Imprisonment	Rs.10,000/-	six Months simple imprisonment



CRL MP(MD) No.10156 of 2023

WEB COPY

6. Aggrieved by the said judgment of conviction and sentence, the petitioner has come forward with the present criminal appeal along with the above application for suspension of sentence.

7. The learned Counsel for the petitioner would submit that in this case there is no evidence against the petitioner and the respondent police has not produced any acceptable evidence against the petitioner to prove the prosecution case and trial Court failed to consider that the victim's family had strong enmity with the petitioner/accused. He further would submit that P.W.3, namely, Kennedy tutored the child to speak against the petitioner before the investigating agency and also before the trial Court, this fact also not been considered by the trial Court. He further would submit that Rs.100/- allegedly put by the petitioner was not recovered, which creates doubt on the prosecution case. He further submitted that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses and the petitioner is in judicial custody from 25.03.2023 apart from his custody during trial.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner has touched the victim's private part and also inserted a sum of Rs.100/- in her inner wear. On the date of alleged occurrence, the



CRL MP(MD) No.10156 of 2023

victim girl was aged about 11 years and the petitioner was about 57 years. He further would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

9. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

10. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains 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 and also considering the period of incarceration, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

11. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal with the following directions:-

- (i) The petitioner is directed to be enlarged on bail on condition that the petitioner 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 learned Special



CRL MP(MD) No.10156 of 2023

WEB COPY

Court for Exclusive Trial of Cases under POCSO Act, Tuticorin,
Tuticorin District.

(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; and

(iii) The petitioner shall appear before the trial Court on the first working day of every week at 10.30 a.m., until further orders.

sd/-
05/01/2024

/ TRUE COPY /

05/01/2024
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TTA

To

1.The Special Court for Exclusive Trial of Cases under POCSO Act,
Tuticorin, Tuticorin District.

2.The Inspector of Police,
All Women Police Station,
Pudukottai, Tuticorin,
Tuticorin District.



CRL MP(MD) No.10156 of 2023

3.The Superintendent,
Central Prison,
Palayamkottai, Tirunelveli District.

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

ORDER
IN
CRL MP(MD) No.10156 of 2023
Date :05/01/2024

ED/ /SAR- (05/01/2024) 7P / 5C

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