



CRL MP(MD) No.11414 of 2023

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

Tuesday, the Nineteenth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.11414 of 2023

in

CRL A(MD)No. 703 of 2023

GOPINATH

... PETITIONER/ APPELLANT

Vs

**THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUVAIYARU,
THANJAVUR DISTRICT.
CRIME NO.10 OF 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 of imprisonment imposed by Principal Special Court for Exclusive Trial of Cases Under POSCO Act, Thanjavur in Spl.S.C.No.91 of 2019 dated 29.03.2023 and enlarge the petitioner/appellant on bail pending disposal of the above said Criminal Appeal.

PRAYER IN CRL A(MD)No. 703 of 2023:

Pleased to call for the records and set aside the Judgment and conviction dated 29.03.2023 by the Principal Special Court for Exclusive Trial of cases under POCSO Act, Thanjavur in Spl.S.C.No. 91 of 2019 and acquit the appellant.

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

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M/S KARUNANITHI.M, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Criminal 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 imposed on him by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.91 of 2019 dated 29.03.2023 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is submitted by the learned counsel for the petitioner that a case has been registered against the petitioner along with other accused in Crime No.10 of 2018, on the file of the respondent/Inspector of Police, All Women Police Station, Thiruvaiyaru, Thanjavur District, for the offences punishable under Section 6 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and the same was taken on file in Spl.S.C.No.91 of 2019 before the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur. The petitioner was convicted and sentenced to undergo twenty five years rigorous imprisonment and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) with one year rigorous imprisonment in case of default for the offence under Section 5(1), 5(j)(ii) r/w. 6 of POCSO Act. Challenging the



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above said conviction and sentence, the petitioner has preferred the Criminal Appeal along with the present Criminal Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel appearing for the petitioner would submit that the petitioner and the victim loved each other and the trial Court failed to note that the prosecution has failed to consider that P.W.1 was a child as on the date of occurrence by producing positive evidence and there is a delay in preferring the complaint and also in forwarding all the documents to the trial Court. He further submitted that the trial Court failed to appreciate the fact that the complaint was given only after the birth of the child and independent witnesses has not been examined. He further submitted that the trial Court failed to note that the vital discrepancies made in the deposition of witnesses and also that the prosecution has miserably failed to prove the charges beyond reasonable doubts. The petitioner is in judicial custody from 29.03.2023 and hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Government Advocate (Crl. side) appearing on behalf of

the respondent vehemently opposed this petition informing that the allegations

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levelled against the petitioner/ A1 are serious in nature. At the time of occurrence, the victim girl was a minor and hence, prays to dismiss the petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate 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 petitioner and hence, this Court is of the prima facie view that there are arguable points involved in this Criminal Appeal. Moreover, the petitioner has been incarcerated from 29.03.2023 and further the Criminal Appeal is not likely to be taken up for final hearing in the near future, 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, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.91 of 2019, dated 29.03.2023, 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, Principal Special Court for Exclusive Trial of Cases under

POCSO Act, Thanjavur;

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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 and sign 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 i.e., learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

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

sd/-
19/03/2024

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21/03/2024
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM
TO

1 THE PRINCIPAL SPECIAL JUDGE
FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
THANJAVUR.



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- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUVAIYARU,
THANJAVUR DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.11414 of 2023
in
CRL A(MD)No. 703 of 2023
Date :19/03/2024

PKP/21.03.2024/ 6P/ 5C

Madurai Bench of Madras High Court is issuing certified
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