



CRL MP(MD) No.8019 of 2024

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

Thursday, the Twenty Second day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.8019 of 2024

in

CRL A(MD) No.211 of 2024

1 JOHN PRABAKAR

2 BERLIN JOSE

... Petitioners / Appellants

Vs

THE INSPECTOR OF POLICE
M.CHATRAPATTI POLICE STATION,
(CRIME. NO. 169/2019)

... Respondent / Complainant

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 up on the Petitioners by the judgment of the Learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai in Spl.S.C.NO.29 of 2021, dated 01.03.2024 and enlarge the petitioners on Bail pending disposal of above criminal appeal no.211 of 2024.

Prayer in CRL A(MD) No.211 of 2024:

To call for the records pertaining to the judgment dated 01.03.2024 in Spl.S.C.No.29 of 2021 on the file of the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai and set aside the same and allow the appeal.



CRL MP(MD) No.8019 of 2024

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 M/S. EBENEZER.T.A, 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:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in Special SC No.29 of 2021, dated 01/03/2024 and enlarge the petitioners on bail pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

The victim girl was aged about 10 years at the time of the occurrence. A1 was the Superintendent of Russ Foundation. A2 was the Founder. The victim was admitted in Russ Foundation on 19/07/2019 and undergoing 8th Standard. Whenever she wants to talk to her mother, she is going to the room of A1 for making telephone call. At that time, A1 touched the victim girl with sexual intent. In the last week of August 2019, A2 took the victim girl to the room of A1 and gave sweet candy. After taking the same, the victim girl got fainted. On that occasion, A1 and A2 committed penetrative sexual assault on the victim girl. She suffered pain in her private part and all over the body. On the basis of the above said occurrence, a case in Crime No.169 of 2019 was registered by the respondent police for the offences under section 376-DB IPC, sections 5(f),5(g), 5(j)(i), 5(m) r/w section 6 of the



CRL MP(MD) No.8019 of 2024

WEB COPY
Act, 2012.

POCSO Act, 2012 and section 9(f),9(g), 9(j), 9(m) read with section 10 of the POCSO Act, 2012.

3.After completion of investigation, final report was filed before the Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai and the same was taken on file in Spl.SC No.29 of 2021.

4.Before the Trial court, on the side of the prosecution, 25 witnesses were examined and 39 documents were marked. Apart from that, 17 material objects were marked. On the side of the accused, 7 witnesses were examined and 33 documents were marked.

5.The learned Trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment, dated 01/04/2024 convicting A1 and sentenced for the offence under sections 9(g), 9(i), 9(m) and 9(p) of the POCSO Act, 2012 r/w. Section 10 of the POCSO Act, 2012 to undergo rigorous imprisonment for a period 7 years and to pay a fine of Rs.1,00,000/- in default to undergo simple imprisonment for a period of six months; and also convicted A2 and sentenced him for the offence under sections 9 (g), 9(i), 9(m) and 9(o) of the POCSO Act, 2012 r/w section 10 of POCSO Act to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo 6 months of simple imprisonment.



CRL MP(MD) No.8019 of 2024

WEB COPY

6. Challenging the above said conviction and sentence, the petitioners preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. Heard both sides.

8. The learned counsel appearing for the petitioners would submit that the genuineness of the of the complaint is doubtful; there is a delay of 5 days in preferring the complaint; Improvement was made with regard to the allegation subsequent to the complaint; Even in the complaint and evidence, the place of occurrence and the date were not properly mentioned; There was motive between the accused and the Chairman of Child Welfare Committee; Only at his instigation, a false complaint has been lodged; Actually, the victim girl suffered brain fever and he is also referring to the statement recorded under section 164 Cr.P.C. He is referring to the evidence of the Investigating Officer to show the improvement. So, according to him, it is a foisted case upon the petitioners at the instance of the above said Chairman.

9. Per contra, the learned Government Advocate (Criminal Side) would submit that the statement of witnesses and the evidences have been recorded and produced before the trial court. Cross examination made to PW2 also focused the criminality of the petitioners.



CRL MP(MD) No.8019 of 2024

WEB COPY

10. In response to the above said argument of the learned Government Advocate (Criminal side), the learned counsel appearing for the petitioners would submit that even the Medical Officer had made improvements in his statement and evidence.

11. Before we go into the rival submissions made by the parties, let us bear in mind the principles set out by the Hon'ble Supreme Court in the judgment reported in Bhupatji Sartajji Jabrati Thakor Vs. The State of Gujarat (Special Leave Petition (Criminal) Diary No.27298 of 2024, dated 05/07/2024, as to the consideration while entertaining a petition for suspension of sentence when fixed terms of imprisonment is imposed. The relevant portion is extracted hereunder:-

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of the imprisonment, the only legal test which the Court should apply is to ascertain



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whether there is anything palpable or apparent on the face of record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of re-appreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record.”

12. Now here, the petitioners have been convicted and undergo fixed terms of imprisonment. So, the question which arises for consideration is whether discretion can be exercised in favour of the petitioners for suspending the sentence.

13. The origin of the prosecution started from the evidence of the Medical Officer, who first treated the victim girl.

14. From the evidence of PW1, it is seen that on 15/10/2019 she was informed by the Trust that the victim is sick, she was taken to the private hospital and thereafter, to the Government Hospital, Madurai. According to her, she was informed by the Medical Officer that the victim was subjected to sexual assault. But who informed the above said assault suffered by the victim girl is not clear on



CRL MP(MD) No.8019 of 2024

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record. But PW20 the Medical Officer, who examined the victim girl found that hymen was not intact. So it shows that there is prima facie evidence available on record to show that the victim was subjected to sexual assault.

15. But whether the complaint was lodged and the medical records were prepared at the instance or at the advice or at the instigation of one Dr. Vijay Saravanan are all matters for consideration at the time of hearing the appeal in detail. I am not going into that aspect now. But prima facie evidence does indicate that the victim was subjected to sexual assault.

16. As mentioned above, during the medical examination her hymen was not intact, which prima facie indicates that she was subjected to sexual intercourse. But she did not depose or in a position to depose with regard to the penetrative sexual assault. So, the trial court thought it fit to acquit the accused for the offence, but convicted the accused for the offences indicated above.

17. As mentioned above, the motive suggested by the accused is referable only to the Dr. Vijay Saravanan. There is no evidence on record to indicate that the victim or the complainant as the case may be were under the control of Dr. Vijay Saravanan.

18. Considering the fact that the victim girl was under the care and custody of the petitioners in the Russ Foundation, I am not inclined to exercise the discretion for suspending the sentence.



CRL MP(MD) No.8019 of 2024

19. In the result, this criminal miscellaneous petition is dismissed.

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sd/-
22/08/2024

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/09/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

To

1. The Sessions Judge,
Principal Special Court for Exclusive Trial of cases under POCSO Act,
Madurai.

2. The Inspector of Police,
M.Chatrapatti Police Station,

3. The Superintendent,
Central Prison, Madurai.

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

+1 CC to M/s.T.A.EBENZER, Advocate (SR-10281[I] dated 22/08/2024)

ORDER
IN
CRL MP(MD) No.8019 of 2024
in
CRL A(MD) No.211 of 2024
Date :22/08/2024



CRL MP(MD) No.8019 of 2024

ED/JGB /SAR- (20/09/2024) 9P / 6C

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