



CRL MP(MD) No.8558 of 2024

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

Tuesday, the Twenty Fourth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.8558 of 2024

in

CRL A(MD) No.374 of 2023

K.PERIYAKARUPPAN

... Appellant / Sole Accused

Vs

THE INSPECTOR OF POLICE
D3-KOODAL PUTHUR POLICE STATION,
MADURAI DISTRICT.
(CRIME NO. 195/2013.)

... 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 of Imprisonment imposed by the Learned Special Judge, Principal Special Court for Exclusive Trial of cases under POCSO ACT, Madurai in Spl.S.c.No.70 of 2017 by the Judgment and conviction dated 21.03.2023 and enlarge the petitioner / accused on bail, pending disposal of the above said criminal appeal.

Prayer in CRL A(MD) No.374 of 2023:

To call for records and set aside the judgment and conviction 21.03.2023 by the learned Special Judge, Principal Special Court for exclusive Trial of cases under POCSO Act, Madurai, in SPL.S.C.No.70 of 2017 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 M/S. RAJA.S, Advocate for the petitioner and of Mr.M.SAKTHI KUMAR,



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Government Advocate (Crl. side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Principal Special Court for exclusive trial of cases under POCSO Act, Madurai, in Spl.S.C.No.70 of 2017, dated 21.03.2023, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that the petitioner/sole accused took the victim child in his TVS XL bearing Registration No.TN-59-AY-0313 to behind the office of Koodalpudur telephone exchange where there was damaged unused houses, that the petitioner asked the victim child to remove her dresses and committed aggravated penetrative sexual assault, that when the victim child could not bear the pain and shouted out of fear, the petitioner threatened her not to inform to anyone, that thereafter, the petitioner brought the victim child to her house for dropping and then the petitioner has gone out, that the victim child was crying hence, her mother enquired and came to know about the occurrence and that on the basis of the complaint lodged by the de-facto complainant, FIR came to be registered in Crime No.195 of 2013.

3.The respondent police, after completing the investigation, has filed the final report for the offences under Sections 3, 4, 5 (m) and 6 of POCSO Act, 2012 and



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Section 506(1) IPC and the case was taken on file in Spl.S.C.No.70 of 2017 and the same was pending on the file of the Principal Special Court for exclusive trial of cases under POCSO Act, Madurai.

4.During trial, the prosecution has examined 17 witnesses as PW1 to PW17, exhibited 22 documents as Exs.P1 to Ex.P22 and marked 1 material object as M.O.1. The defence has examined 2 witnesses as D.W.1 and D.W.2, but no document was marked.

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 21.03.2023 convicting the petitioner for the offences under Sections 5(m) r/w 6 of POCSO Act, 2012 and Section 506(1) IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Sections 5(m) r/w 6 of POCSO Act, 2012 and to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 506(1) IPC and that the above sentences were ordered to be run concurrently.

6.Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above application



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for suspension of sentence.

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7. Heard both sides.

8. In spite of repeated dismissal, this petition is filed by the petitioner on the ground that there was previous enmity between the party, which brought on record but that was not considered either by the trial court or by this court on the issue earlier occasion. On that account, he was heard.

9. The learned counsel appearing for the petitioner would submit that PW1 has admitted that a compromise was made by the accused to send her husband to abroad for job, so the passport was handed over to the accused. Unable to pay Rs.1,00,000/- demanded by the accused, they received back the passport from the accused wife. But it is seen that the victim girl was taken by the accused and dropped back after some time. At that time, the victim girl was crying. Now the statement of the victim girl before the trial court is that she was subjected sexual assault while she was taken out of the house for purchasing food and other things. Medical evidence shows that her hymen was not intact. So, this prima facie indicates that she was sexually assaulted. Whether the enmity suggested by the appellant has caused the complaint is a matter for consideration at the time of trial. A suggestion was made by the accused to PW1 that after the above said incident of receiving the back the passport, the appellant visited the house with foods and other things. So,



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this itself shows that there is no enmity on the date of the occurrence.

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10.I am of the considered view that no ground is available to the petitioner, except the petitioner is aged about 69 at the time of the occurrence. The petitioner is at liberty to argue the main appeal.

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

sd/-
24/09/2024

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/10/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

To

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

2.The Inspector of Police,
D3 Koodal Puthur Police Station,
Madurai District.

3.The Superintendent,
Central Prison, Madurai.

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



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ORDER

IN

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in

CRL A(MD) No.374 of 2023

Date :24/09/2024

ED/ JGB /SAR- (18/10/2024) 6P / 5C

**Madurai Bench of Madras High Court is issuing certified copies in this format from
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