



Crl.MP(MD)No.11675 of 2023 in Crl.A(MD)No.718 of 2023

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G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioners/A1 and A2 in Special SC No.48 of 2018, dated 30/01/2023 passed by the Sessions Judge, Fast Track Mahila Court, Theni and enlarge them on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution is that the victim girl is aged about 5 years. She was subjected to penetrative sexual assault by A1. A2 has misbehaved sexually with the victim girl. On the basis of the complaint given by the de-facto complainant, the mother of the victim girl, a case in Crime No.263 of 2018 was registered by the respondent police for the offences under sections 6 and 8 of the POCSO Act, 2012.

3.After completion of the investigation, final report was filed before the Sessions Judge, Fast Track Mahila Court, Theni, charge sheeting the accused for the offence section 6 of the POCSO Act, 2012 and the same was taken on file in Special SC No.48 of 2018.



4.Before the trial Court, on the side of the prosecution, 15 witnesses were examined and 11 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the accused guilty of the offence under section 6 of the POCSO Act and sentenced them to undergo Rigorous Imprisonment for 10 years each and to pay the fine of Rs.25,000/- each, in default to undergo 2 years of Simple Imprisonment.

6.Challenging the conviction and sentence, this appeal is preferred by the appellants/A1 and A2. Pending appeal, this criminal miscellaneous petition was taken out by the petitioners/A1 and A2 seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioners would submit that the date of the occurrence is stated to be 13/09/2018 and the judgment was rendered on 30/01/2023. Ever-since, they are in custody. So, he seeks suspension of sentence.



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9.Per contra, the learned Government Advocate (Criminal side) would submit that enough material is available against the accused and the trial court has rightly convicted the petitioners. So, no indulgence need be shown.

10.Reading of the entire records *prima facie* indicate the involvement of A1. So this court is not inclined to enlarge the first petitioner/A1 on bail by suspending the sentence considering the age of the victim girl and the manner in which the offence said to have been committed by the first petitioner/A1. Accordingly, this petition is **dismissed against the first petitioner/A1.**

11.Regarding the second petitioner/A2, there are some discrepancies in the prosecution evidence and the specific incident of the occurrence in respect of A2 has not been properly stated by the prosecution and the witnesses. It has been baldly stated that the second petitioner/A2 used to take victim girl to the shop and misbehaved sexually.

12.But however, considering the overact attributed against the second petitioner/A2 and the age, the period of incarceration and also considering the fact that there are



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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** in respect of the second petitioner/A2 alone and the substantive sentence of imprisonment alone is suspended and the second petitioner/A2 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, Fast Track Mahila Court, Theni and on further condition that the second petitioner/A2 shall appear before the said Court on the first working day of every week at 10.30 am until further orders.

18/09/2024

Index : Yes/No
Internet: Yes/No
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To,

- 1.The Sessions Judge,
Fast Track Mahila Court,
Theni.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Inspector of Police,
Rayappanpatti Police Station,
Theni District.
- 4.The Superintendent,
Central Prison,
Madurai.



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