



Crl.MP(MD)No.11924 of 2023 in Crl.A(MD)No.741 of 2023

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

Monday, the Nineteenth day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)No.11924 of 2023 in Crl.A(MD)No.741 of 2023

IRULAPPAN

... PETITIONER/ APPELLANT/
ACCUSED

Vs

THE INSPECTOR OF POLICE
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.907 OF 2020.

... RESPONDENT/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 execution of sentence in judgment passed in Spl.SC.No.1 of 2021 dt.17.3.2023 on the file of the Special Court for POCSO Act Cases, Srivilliputtur, Virudhunagar District and enlarge the Petitioner on bail pending disposal of the above Crl A(MD)No. Of 2023.

Prayer in Crl.A(MD)No.741 of 2023:

To admit this appeal and to call for the records relating to Judgment dated 17.03.2023 in Spl.S.C.No.1 of 2021 on the file of the Special Court for POCSO Act Cases, Srivilliputhur Virudhunagar District and to set aside the conviction and sentence allow the appeal by acquitting the appellants.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.THIRUPATHY S, 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:-



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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Special SC No.1 of 2021, dated 17/03/2023 and enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

The de-facto complainant is the father of the victim girl. She was aged about 7 years. The victim was mentally ill. She was undergoing treatment for the mental illness. On 06/09/2020, it was informed to the de-facto complainant by the victim that she was forcibly taken by the accused to his house and committed penetrative sexual assault. On the basis of the complaint, a case in Crime No.907 of 2020 was registered for the offences under sections 5(k), 5(l) and 6 of POCSO Act, 2012.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.1 of 2021 by the Sessions Judge, Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur.

4.On the side of the prosecution, 10 witnesses were examined and 14 documents were marked. On the side of the accused, no oral and documentary



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evidence was adduced.

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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, sentenced him to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months simple Imprisonment.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioner would submit that the evidence of the victim and the de-facto complainant was not supported by the medical evidence. PW6-Medical Officer, who examined the victim has stated nothing about any symptom. So, according to him, when the medical evidence has not supported the case of the prosecution, he is entitled for suspension of sentence, considering the period of incarceration.



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9. But contra, the learned Government Advocate (Criminal side) appearing for the respondent would submit that the victim girl was mentally ill patient and a clear evidence was given by her before the trial court and the prosecution has also proved the guilt of the accused by circumstantial evidence.

10. Perusal of the records shows that the victim girl was very clear in her evidence with regard to the alleged penetrative sexual assault made by the petitioner several times. Sufficient evidence is also available to indicate that the victim girl was subjected to sexual penetrative assault.

11. Considering the mental illness of the victim and the aged of this petitioner, I am of the considered view that no case is made out by the petitioner for suspending the sentence.

12. Let the medical evidence can be taken at the time of appeal by the petitioner herein since the victim evidence is against the petitioner. So, the manner in which the offence said to have been committed dis-entitles the petitioner from claiming the discretionary relief of suspension of sentence.



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

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/09/2024

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

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TO

- 1.THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR,
- 2.THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 3.THE INSPECTOR OF POLICE
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN

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Date :19/08/2024

RK /VR(06/09/2024) 5P /5C

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