



CRL MP(MD) No.13222 of 2023

WEB COPY

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.13222 of 2023

in

CRL A(MD) No.848 of 2023

M.ESWARAN

... Petitioner / Appellant

Vs

THE INSPECTOR OF POLICE  
ALL WOMEN POLICE STATION,  
RAJAPALAYAM,  
VIRUDHUNAGAR DISTRICT.  
(CRIME NO.01 OF 2023.)

... 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 and release the Petitioner on bail pending disposal of the Criminal Appeal before this Honble Court against the Judgment in Spl.SC.No.31 of 2023 on the file of the Special Court(POCSO Cases),Virudhunagar at Srivilliputhur dated 11.04.2023.

Prayer in CRL A(MD) No.848 of 2023:

To call for the records in Special Sessions Case No.31 of 2023 on the file of the Special Court (POCSO ACT CASES), Virudhunagar District at Srivilliputhur dated 11.04.2023 and set aside the same 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



**CRL MP(MD) No.13222 of 2023**

of M/s.R.VENKATESAN, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor 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, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.31 of 2023 dated 11.04.2023 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 in Crime No.1 of 2023, on the file of the respondent/Inspector of Police, All Women Police Station, Rajapalayam, for the offences punishable under Section 10 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.31 of 2023 before the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur. The petitioner was convicted and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) with six months simple imprisonment in case of default for the offence under Section 10 of POCSO Act. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Criminal Miscellaneous



**CRL MP(MD) No.13222 of 2023**

Petition seeking suspension of sentence.

WEB COPY

3. The learned counsel for the petitioner submitted that most of the witnesses are interested witnesses and close relatives of the victim and all have expressed only doubts and not conclusive proof of the case. He further submitted that trial Court failed to consider the fact that the investigation and filing of final report itself illegal and without any substance of evidence both direct and circumstantial it had come to the wrong conclusion that the petitioner committed the aggravated sexual assault on the victim. 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 11.04.2023. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned counsel further submitted that trial is mockery and the trial Court conducted the trial in a hurried manner without giving sufficient opportunity to the petitioner to defend the charges levelled against him and hence, the learned counsel prays to remit the matter to the trial Court for de novo trial by affording proper opportunity to the petitioner to defend himself. To support his contention, he relied on the judgment of the Hon'ble Supreme Court of India, in the case of Naveen @ Ajay Vs. The State of Madhya Pradesh (Criminal Appeal Nos.489



**CRL MP(MD) No.13222 of 2023**

and 490 of 2019) dated 19.10.2023.

WEB COPY

5. The learned Additional Public Prosecutor appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature. The trial Court after giving sufficient opportunity to the petitioner and verifying all documents and evidences has rightly convicted the petitioner for a period of seven years and hence, there is no need for retrial. At the time of occurrence, the victim child was 4 years old. He further submitted that the petitioner is in custody pursuant to the confirmation of conviction by the Court and hence, opposed for allowing this petition.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

7. In view of the judgment cited supra, 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 11.04.2023 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.



**CRL MP(MD) No.13222 of 2023**

WEB COPY

8. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.31 of 2023 dated 11.04.2023 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, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur;

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 learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District



CRL MP(MD) No.13222 of 2023

at Srivilliputhur.

WEB COPY

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

sd/-  
19/03/2024

/ TRUE COPY /

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

RM

To

1.The Sessions Judge,  
Special Court for POCSO Act Cases,  
Virudhunagar District at Srivilliputhur.

2.The Inspector of Police,  
All Women Police Station,  
Rajapalayam.

3.The Superintendent,  
Central Prison,  
Madurai.

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

+1 CC to M/s.R.VENKATESAN, Advocate ( SR-3448[I] dated 20/03/2024 )



WEB COPY



**CRL MP(MD) No.13222 of 2023**

ORDER  
IN  
CRL MP(MD) No.13222 of 2023  
in  
CRL A(MD) No.848 of 2023  
Date :19/03/2024

ED/ /SAR- (21/03/2024) 7P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from  
17/07/2023