



Crl.M.P.(MD) No.14957 of 2023

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

**Thursday, the Twenty Ninth day of February Two Thousand and Twenty Four
PRESENT**

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) No.14957 of 2023

in

Crl.A(MD) No.949 of 2023

PERUMAL

**... PETITIONER/ APPELLANT/
SOLE ACCUSED**

Vs

**STATE REP.BY.
THE INSPECTOR OF POLICE
VADIPATTI POLICE STATION,
MADURAI DISTRICT.
CRIME NO.252/2018.**

... 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 sentence imposed on the petitioner/Appellant/Sole Accused namely Perumal, S/o.Karuppanan Pillai passed by the Learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai in Spl.SC.No.109/2018 dt.21/11/2022 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal and thus render justice.

Prayer in Crl.A(MD) No.949 of 2023:

To call for the records of the impugned judgment made in Spl.S.C.No.109 of 2018 on the file of the Learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai dated 21.11.2022 and set aside the same and thus render justice.

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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/A.JEGADEESH PANDIAN M, Advocate for the petitioner and of MR.M.MUTHUMANIKKAM, Government Advocate(Crl.Side) on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in Spl.S.C.No.109 of 2018 dated 21.11.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that at the time of incident, the victim girl was aged 10 years old and the accused was aged 58 years. On 30.06.2018 at evening 5.00 p.m., when the victim girl was waiting for tuition, near the house of the tuition teacher, the petitioner/accused enticed the victim girl and sexually abused the victim girl. Thereafter, the victim girl informed the said incident to her mother. Based on a complaint, a case was registered and after concluding the investigation, final report was filed against the accused for the offences under Section 7 r/w. 8 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and subsequently, altered into Section 9 (m) r/w. 10 of POCSO

Act

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3. The learned Sessions Judge, after full-fledged trial, has passed the judgment in Spl.S.C.No.109 of 2018, dated 22.11.2022 and convicted the petitioner/accused for the offence under Section 9 (m) r/w. 10 of POCO Act and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- with six months Simple Imprisonment in case of default. Aggrieved over the above said conviction and sentence, imposed by the Court below, the petitioner preferred the present Criminal Appeal along with the present Miscellaneous Petition seeking for suspension of sentence.

4. The learned counsel for the petitioner submits that though the prosecution relied upon the evidence of P.W.4 (tuition teacher) who is the material witness in this case, she did not admit the presence of petitioner and victim girl together at the place of occurrence and the evidence of P.W.4 is contradicted with P.W.2. He further submitted that the father of the victim girl (P.W.3) has deposed that the accused arrived to the scene of occurrence in an inebriated stage, however, there is no averment qua consuming liquor by the petitioner/accused in the complaint as well as in the evidence of P.W.1 and P.W.2, thereby the evidence of P.W.3 ought not to be relied by the trial Court. Learned counsel for the petitioner submitted that the

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petitioner will adhere to any conditions imposed upon him and prays for suspension of sentence of the petitioner.

5. The learned Government Advocate (Crl. Side) appearing for the respondent police would submit that it is the case where the accused had sexually assaulted the victim girl and induced the victim girl to take to another place in order to continue the sexual assault. The evidence of the victim girl (P.W.2) is crystal clear and that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the State and perused the materials available on record.

7. Considering the facts and circumstances of the case and also taking into consideration the age of the petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

8. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Principal Special Court for Exclusive



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Trial of Cases under POCSO Act, Madurai, in Spl.S.C.No.109 of 2018 dated 21.11.2022

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, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai;

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 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 ie., learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.



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v) On breach of any of the aforesaid conditions, the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]; and

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A of IPC.

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

sd/-
29/02/2024

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01/03/2024
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO
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1. THE SESSIONS JUDGE, PRINCIPAL SPECIAL COURT
FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
MADURAI.

2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
VADIPATTI POLICE STATION,
MADURAI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-2610[I] dated 01/03/2024)

ORDER
IN
Crl.M.P.(MD) No.14957 of 2023
in
Crl.A(MD) No.949 of 2023
Date :29/02/2024

SSA/SAR /01.03.2024/ 7P/ 6C

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