



CRL MP(MD) No.14774 of 2023

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

Thursday, the Nineteenth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.14774 of 2023

IN

CRL A(MD) No.938 of 2023

SIVABALAN @ JEYAPAL ... PETITIONER/ APPELLANT/ ACCUSED

Vs

THE INSPECTOR OF POLICE
MELUR,
MADURAI DISTRICT.
CRIME NO. 10/2020

... 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 Spl S.C No. 87/2020 dt. 28.08.2023 on the file of the Honble Special Court for Exclusive trial of POCSO Act cases, Madurai enlarge the petitioner on bail, pending disposal of the Criminal appeal.

Prayer in CRL A(MD) No.938 of 2023:

Pleased to call for the records from the file of the trial Court (Special Court under for the exclusive trial of POCSO Act Cases, Madurai), hear the submissions of the Appellant/Accused and the prosecution, set aside the judgment of the trial court passed in Spl.S.C.No.87/2020 dated 28th August, 2023 by allowing this appeal and acquit the Appellant/Accused.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon
<https://www.jmhc.tn.gov.in/judis>



CRL MP(MD) No.14774 of 2023

perusing the petition filed in support thereof and upon hearing the arguments of M/S.VIJAYAKUMAR M, 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:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Special Court for Exclusive trial of cases under POCSO Act, Madurai, in Special SC No.87 of 2020, dated 28/08/2023 and to enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution brief:-

The de-facto complainant lodged a complaint stating that the victim girl was aged about 8 years at the time of the occurrence. On 28/07/2020 at about 07.00 am, she complained pain in her private part. On enquiry, she stated that on 22/07/2020 when she went to the field for grazing the cow, the accused came there, misbehaved sexually by taking her to his house and committed penetrative sexual assault. It is also stated by her that criminal intimidation was also made to kill her if she disclose the same to any one. Upon the occurrence, a case in Crime No.10 of 2020 was registered by the respondent police for the offences under sections 5(m) r/w 6 of POCSO Act and 506(ii) IPC.

3.After completion of the investigation, the respondent police filed a final report for the offences under sections 449, 376AB, 506(ii) IPC and section 5(m) of POCSO



CRL MP(MD) No.14774 of 2023

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Act, 2012 r/w section 6 of POCSO Act, 2012 and the same has been taken cognizance in Special SC No.87 of 2020 by the Sessions Judge, Special Court for the Exclusive Trial of POCSO Act Cases, Madurai.

4.On the side of the prosecution, 14 witnesses were examined and 21 documents were marked. Apart from that, 3 material objects were marked. On the side of the accused, 3 witnesses were examined and one document was marked.

5.At the conclusion of the trial process, the trial court found the petitioner guilty of the offences and sentenced him to undergo 5 years RI and to pay a fine of Rs.10,000/- in default to undergo 6 months SI for the offence under section 449 IPC; sentenced to undergo 20 years RI and to pay a fine of Rs.1,00,000/- in default to undergo 2 years SI for the offence under section 5(m) r/w 6 of POCSO Act; and sentenced him to undergo 2 years RI and to pay a fine of Rs.5,000/- in default to undergo 3 months SI for the offence under section 506(i) IPC and directed all the sentences to run concurrently.

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 true



CRL MP(MD) No.14774 of 2023

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genesis of the prosecution is suppressed; on the same day when the petitioner made objection for grazing the cow in his field, because of that motive, after a long delay the complaint was given; To probabalise their defence, they examined the defence side witnesses to show that on the date of the occurrence, the mother of the victim was not available in the house; That was not taken into account by the trial court; The medical evidence does not support the case of the prosecution; The complaint given before the Melur Police Station was not brought on record; Even as per the evidence of PW1, the complaint was not prepared by the de-facto complainant; The medical records shows that there is no external injury in the private parts of the victim girl; it is a case of raising alarm by PW2, but that occurred due to grazing of cow in the field of the petitioner by the victim girl.

9.Per contra, the learned Government Advocate (Criminal side) would submit that the medical evidence supported the case of the prosecution, the hymen was not intact; The motive suggested by the petitioner was not proved.

10.In reply to the above said, the learned counsel appearing for the petitioner would submit that the evidence of such nature must be viewed favourably; when the motive is suggested, false implication cannot be ruled out. He relied upon the following judgments viz., (1)Bhupatji Sartajji Jabraji Thakor Vs. The State of Gujarat (Special Leave Petition (Criminal) Diary No.27298/2024, dated 05/07/2024) and (2)



CRL MP(MD) No.14774 of 2023

Mariappan Vs. The Inspector of Police, All Women Police Station, Rjapalayam,
Virudhunagar District (2023-2-LW-(CrI)596).

11. But reading of the evidence of the victim girl does not indicate that it suffers from any tutoring or motivated. The medical evidence does support the case of the prosecution. Hymen was not intact. That suggested the possibility of penetrative sexual assault. Absolutely, there is no question of false implication, since prima facie it does indicate that she was sexually abused.

12. Considering the manner in which the offence said to have been committed, I am of the considered view that no discretion can be exercised in favour of the petitioner.

13. In the result, this miscellaneous petition is dismissed. Since typed set is made ready, the petitioner may argue the main appeal.

sd/-
19/09/2024

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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 SESSIONS JUDGE,
SPECIAL JUDGE FOR THE EXCLUSIVE TRIAL OF POCSO ACT CASES,
MADURAI.



CRL MP(MD) No.14774 of 2023

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
MELUR,
MADURAI DISTRICT.

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

+1 CC to M/s.M.VIJAYAKUMAR, Advocate (SR-11407[I] dated 19/09/2024)

ORDER IN
CRL MP(MD) No.14774 of 2023
IN

CRL A(MD) No.938 of 2023
Date :19/09/2024

SA/JGB/SAR. /19.10.2024/6P/6C

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