



CRL MP(MD) No.15417 of 2023

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

Wednesday, the Twenty First day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.15417 of 2023

in

CRL A(MD) No.698 of 2022

PANDEESWARAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
SRIVILLIPUTHUR ALL WOMEN POLICE STATION,
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.

CR.NO.285/2016

... 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 imposed in the order of conviction against the petitioner appellant in Spl.Sc.No.52/2016 dt 14.06.2022 on the file of the Learned Sessions Judge (Special Court for POCSO Act Cases) Virudhunagar District at Srivilliputhur till the disposal of pending appeal.

Prayer in CRL A(MD) No.698 of 2022 :

To call for the records pertaining to the judgment dated 14.06.2022 in Spl.S.C.No.52 of 2016 on the file of the Sessions Judge (Special Court of POCSO Act Cases) Virudhunagar District at Srivilliputhur and to set aside the same, by allowing this Criminal Appeal and may be pleased to acquit the Appellant/ Accused from the charges framed against him.



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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/S.MUTHUMALAI K, Advocate for the petitioner and of MR.R.SIVAKUMAR, 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, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.52 of 2016 dated 14.06.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim girl was aged 16 years at the time of alleged occurrence and that the petitioner/accused is a married person. The main allegation is that he lured the immature victim girl by giving a false promise to her that he will marry her and had committed aggravated penetrative sexual assault on her. Based on a complaint, a case has been registered against the petitioner in Crime No.285 of 2016 for the offences punishable under Sections 417, 506(i), 368 of IPC and Sections 5(n) r/w. Sections 6 and 5(1) r/w. Section 6 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.52 of 2016 before the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur. The petitioner was convicted and sentenced to undergo 10 years



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Rigorous Imprisonment and to pay a fine of Rs.10,000/- with one year simple imprisonment, in case of default. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that there is a contradiction between the oral evidence and documentary evidence given by the victim girl and P.W.10/School Headmistress qua the date of birth of the victim girl. The Court below has not considered this aspect and convicted the petitioner. The petitioner has been incarcerated for more than 20 months. Learned counsel submitted that now the victim girl has also got married to another person and living peacefully and the petitioner is having two children and he is the sole breadwinner for his family. Learned counsel further submitted that if the petitioner is released on bail, he is ready to abide any conditions imposed by this Court and thereby, he prayed for bail.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that this is the third bail application filed by the petitioner. Earlier, the petitioner has moved a petition in Crl.M.P.(MD) No.13120 of 2022 and the same was dismissed by this Court on 02.01.2023. Thereafter, he filed Crl.M.P.(MD) No.5542 of 2023 before this Court which was also dismissed on 27.06.2023. Now, the petitioner again came before this Court without any change of circumstances. He further



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submitted that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

5. 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.

6. Admittedly, the petitioner's earlier applications were dismissed by this Court. However, considering the facts and circumstances of the case, the period of incarceration of the petitioner 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.

7. 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.52 of 2016 dated 14.06.2022 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, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur;

ii) The sureties shall affix their photographs and Left Thumb Impression in the



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surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass

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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, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur.

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

sd/-
21/02/2024

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22/02/2024

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE INSPECTOR OF POLICE
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.



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3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.K.MUTHUMALAI, Advocate (SR-2159[I] dated 21/02/2024)

ORDER IN
CRL MP(MD) No.15417 of 2023
in
CRL A(MD) No.698 of 2022
Date :21/02/2024

RS//SAR-(22.02.2024) 6P 6C
Madurai Bench of Madras High Court is issuing
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