



Crl.MP(MD) No.13049 of 2024

WEB COPY

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

Tuesday, the Third day of December Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN

Crl.MP(MD) No.13049 of 2024
in
Crl.A(MD)No.130 of 2023

S.KATHIRVELSAMY

... PETITIONER/ APPELLANT

Vs

THE STATE OF TAMILNADU
REP BY THE INSPECTOR OF POLICE,
ARUPPUKOTTAI ALL WOMEN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.15/2020).

... RESPONDENT/RESPONDENT

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 of Imprisonment imposed by the Learned Special Court for POCSO Act Cases, Virudhungar District at Srivilliputhur in Spl.S.C.No.72 of 2020 by the Judgment dated 02.11.2022 and enlarge me on bail, Pending disposal of the above said Criminal Appeal.

Prayer in CRL A(MD).130/2023 :

To call for the records relating to the conviction passed in Spl.S.C.No.72 of 2020 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, dated 02.11.2022 and set aside the same.



Crl.MP(MD) No.13049 of 2024

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.AK.AZAGAR SAMI, 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 petition has been filed to suspend the sentence imposed by the learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, dated 02.11.2022, in Spl.S.C.No.72 of 2020.

2.The learned counsel appearing for the petitioner would submit that there are several infirmities in the prosecution case. Further, there is a delay of 5 days in registering the FIR, however, there was no explanation whatsoever given for the said delay. Hence, the prayer to suspend the sentence.

3.The learned Government Advocate (Criminal Side) appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. Hence, he strongly opposed to allow this petition.

4.Heard both sides.

5.This petition has been filed to suspend the sentence imposed on the petitioner



Crl.MP(MD) No.13049 of 2024

WEB COPY

as a third time. Firstly, the petitioner filed a suspend the sentence petition and the same was dismissed in Crl.M.P.(MD).No.2785 of 2023 dated 02.03.2023. Again, the petitioner filed second petition and this Court passed a detailed order and dismissed the same in Crl.M.P.(MD).No.15595 of 2023, dated 06.12.2023, which is as follows:

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.72 of 2020, dated 02.11.2022 by the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The learned counsel appearing for the petitioner submitted that the learned trial Judge has convicted the petitioner only on assumption and presumption and not on evidence. Further, the petitioner has no bad antecedent and previous conviction for any offences. Therefore, he prayed to suspend the sentence imposed on the petitioner.

3. The learned Additional Public Prosecutor appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. He would further submit that this is the second application and the earlier application was dismissed by this Court on 02.03.2023 in Crl.M.P(MD)No.2785 of 2023 and



Crl.MP(MD) No.13049 of 2024

there is no change in circumstances. Hence, he strongly opposed to grant suspension of sentence.

4. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

5. This petition has been filed to suspend the sentence imposed on the petitioner as a second time. In earlier occasions, this Court passed a detailed order and dismissed the same in Crl.M.P.(MD).No.2785 of 2023 dated 02.03.2023, which is as follows:

"2.The facts in brief:- On 24/09/2020 and 25/09/2020, when the victim was playing along with her friends, the accused took up the victim girl, who is aged 4 years to his house and licked her private part and also threatened the victim girl. On the basis of the above said occurrence, the case was registered for the offences punishable under section 5(m) r/w 6 of POCSO Act and 506(i)IPC. After completing the formalities of the investigation, final report has been filed before the concerned trial court in Special SC No.72 of 2020.

3.Before the trial court, on the side of the prosecution, 9 witnesses were examined and 13 documents marked. On the side of the accused, no oral and documentary evidence was adduced.



Crl.MP(MD) No.13049 of 2024

WEB COPY

4.At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced him to undergo 20 years Rigorous Imprisonment and imposed a fine of Rs.10,000/- with default clause for the offence under section 5(m) r/w 6 of POSCO Act, 2012; and to undergo 1 year Simple Imprisonment for the offence under section 506(i) IPC.

5.Challenging the above said conviction and sentence, Criminal Appeal has been preferred. Pending appeal, this miscellaneous petition has been filed.

6.Heard both sides.

7.The learned counsel appearing for the petitioner would submit that there is a delay of two or more days in preferring the complaint, since PW1 stated that two days prior to the filing of the FIR, the alleged occurrence took place on 04/10/2020 and 08/10/2020; Even though, it has been stated, it was suppressed in the complaint and the victim was tutored by the parents and PW1 was not cross examined on the side of the prosecution; and PW9 during the course of cross examination has stated about the motive and illegal intimacy, but the friend of the victim namely Gopika was not examined. According to him, in view of the discrepancy of the prosecution evidence, the petitioner is entitled for



Crl.MP(MD) No.13049 of 2024

suspension of sentence.

8.The learned Additional Public Prosecutor would submit that taking advantage of the relationship, the above said misbehaviour has been made and PW2-victim has given a clear picture by indicating the private part, in which the petitioner misbehaved and other events.

9.Absolutely, nothing is brought on record to disbelieve her evidence. So, I find no reason to suspend the sentence. The manner in which, the above said occurrence said to have committed is sufficient for dismissing the suspension.

10.In the result, this criminal miscellaneous petition is dismissed".

6. Therefore, considering the gravity of the offence and the manner in which, the offence was committed by the petitioner, this Court does not find any new grounds to suspend the sentence imposed on the petitioner.

7. In the result, this Criminal Miscellaneous Petition is dismissed.

6.This is the third application and in this petition, there is no grounds differ from the earlier petitions' grounds. Hence, this Court does not find any new grounds to entertain this petition.



Crl.MP(MD) No.13049 of 2024

WEB COPY

7. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
03/12/2024

/ TRUE COPY /

/12/2024

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

VSG

TO

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

2 THE INSPECTOR OF POLICE,
ARUPPUKKOTTAI ALL WOMEN POLICE STATION,
ARUPPUKKOTTAI.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

ORDER

IN

Crl.MP(MD) No.13049 of 2024

in

Crl.A(MD)No.130 of 2023

Date :03/12/2024

RK/VR(26/12/2024) 7P / 5C

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