



CRL MP(MD) No.16236 of 2023

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

Thursday, the Eleventh day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.16236 of 2023

IN

CRL A(MD) No.742 of 2023

SUYAMBU DURAI
(PRESENTLY CONFINED AT CENTRAL
PRISON,PALAYAMKOTAI)

...APPELLANT/SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VALLIYOOR,
TIRUNELVELI DISTRICT.
(CRIME NO. 07/2019)

...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 enlarge him on bail by suspending the sentence imposed on the petitioner by the Sessions Judge, Special court for POCSO Act cases, Tirunelveli in Spl S.C no. 287 of 2019 dt. 23.06.2023 pending disposal of the above criminal appeal.

PRAYER IN CRL A(MD)No. 742 of 2023:

To Call for the records and to set aside the judgment made in Spl.S.C.No. 287 of 2019 by the sessions judge, special Court for POCSO Act cases, Tirunelveli dated 23.06.2023.



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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 MR.D.VENKATESH, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 23.06.2023 made in Spl.S.C.No.287 of 2019 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli and to enlarge him on bail pending disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The victim girl was studying 3rd standard at the time of occurrence. On 28.04.2019 evening the victim girl was playing at the Avudaiyarpuram beach, the petitioner/accused called the victim girl and took her to place near to Udaimaram and committed sexual assault on her private part by putting his hand and it was committed three days. Victim narrated the incident to her aunt P.W.1, who lodged a complaint before the All Women Police Station, Valliyoor. FIR was registered in Crime No.07 of 2019 for the offence under Section 9(1)(m) r/w 10 of POCSO Act against the petitioner/accused. P.W.16 - Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offences under sections stated above.

3. To prove the charge, the prosecution examined 16 witnesses as P.W.1 to



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P.W.16 and marked 21 exhibits as Ex.P1 to Ex.P21. No material object was marked.

On the defence side no witness was examined and no exhibit was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 10 of POCSO Act and convicted and sentenced him to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a period of 6 months for the offence under Section 10 of POCSO Act by passing impugned judgment dated 23.06.2023.

4. Aggrieved by the conviction judgment, the petitioner/accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail pending disposal of the appeal.

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

6. The learned counsel for the petitioner has submitted that the petitioner/accused was falsely implicated in this case due to motive between the petitioner/accused and P.W.1. The FIR was lodged after three days and the same was sent to Court belated and there is no explanation on prosecution side. Admittedly the victim was playing at the seashore along with other girls, but except the victim, no



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other girl or public was examined by the prosecution, as there will be public floating in the beach at evening hours. The victim gave a statement for the offence under Section 164 of Cr.P.C. before the learned Judicial Magistrate wherein she mentioned 'thaatha' (old man) and that she and one another Mehala were subjected to assault. But, contrary to her statement she deposed as Annam Thaatha. The victim also deposed that both the petitioner/accused and her aunt do not use to talk themselves. The evidence of P.W.14/Medical Officer did not support the prosecution case. The petitioner is aged man and he is suffering from systemic hypertension and chronic kidney disease and he was given conservative treatment. The petitioner is only breadwinner of his family. The petitioner/accused is in prison for the past six months from the date of judgment. The petitioner has a fair chance of succeed in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 8 years old at the time of alleged occurrence. The victim girl subjected sexual assault by the petitioner/accused for three days which was clearly narrated by her to P.W.1. P.W.14/Medical Officer categorically deposed that the hymen was not intact, which corroborate the evidence of victim. As per settled law, the evidence of victim child need not be corroborated by other witness. The Trial



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Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the accused as stated therein. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that there was motive between the petitioner and P.W.1, which was affirmed by the victim P.W.2. Further, it is mainly contended that at the time of occurrence, the victim was playing with other girls of her age group, but no one was examined by the prosecution much less no public was examined as the occurrence place is a beach. However, these are to be decided while deciding the appeal on merits. The learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case. The criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future. The petitioner/accused was sentenced to five years. The prosecution filed a medical report of the petitioner/accused who is suffering from systemic hypertension/chronic kidney disease and he was given conservative treatment. The



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petitioner/appellant is in prison for the past 6 months. In the above circumstances and considering the medical report of the petitioner and other facts and circumstances, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) The petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli;

(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; and

(iii) The petitioner shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders and if he is not able to

appear before the trial Court on any day, he shall make arrangements to



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file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
11/01/2024

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

VSD

TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
TIRUNELVELI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, VALLIYOOR,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.



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

+1 CC to M/s.D.VENKATESH, Advocate (SR-583[I] dated 11/01/2024)

ORDER
IN
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IN
CRL A(MD) No.742 of 2023
Date :11/01/2024

PKP/SAR- /11.01.2024/ 8P/ 6C
Madurai Bench of Madras High Court is issuing certified
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