



CRL MP(MD) No.16244 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Thursday, the Fourth day of January Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.16244 of 2023
in
CRL A(MD)No.740 of 2023

SEKAR
(PRESENTLY CONFINED AT CENTRAL PRISON,
PALAYAMKOTTAI.) ... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
SHENKOTTAI POLICE STATION,
TENKASI DISTRICT. ... 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. 307 of 2019 dated 23.06.2023 pending disposal of the above criminal appeal.

PRAYER in CRL A(MD)No.740 of 2023:

To call for the record and set aside the judgment made in Spl.S.C.No.307 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli dated 23.06.2023.

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:-



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3. To prove the charge, the prosecution examined 17 witnesses as P.W.1 to P.W.17 and marked 18 exhibits as Ex.P1 to Ex.P18 and one material object was marked as M.O.1. On the defence side, no witness was examined and no exhibit was marked.

4. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Sections 363, 323, 294(b), 506(i) of IPC and Section 6 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.1,000/-, in default, to undergo rigorous imprisonment for a period of 6 months for the offence under Section 363 of IPC and sentenced him to undergo 6 months rigorous imprisonment each for the offence under Sections 323, 294(b), 506(i) of IPC and sentenced him to undergo rigorous imprisonment for a period of 14 years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for a period of 1 year for the offence under Section 6 of POCSO Act and ordered the sentence of imprisonment to run concurrently by passing impugned judgment dated 23.06.2023.

5. Aggrieved by the conviction judgment, the 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.



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

7. The learned counsel for the petitioner has submitted that there was a material contradiction between the ocular witnesses P.W.1 and PW.2 and the evidences of prosecution witnesses shows that the occurrence place is a thick populated area. P.W.1 was inimical with the petitioner/accused as deposed by P.W.2 who is victim boy. But, the Trial Court has not considered their evidences. The petitioner has not committed any offence as alleged and he is in prison from the date of judgment. The petitioner has a fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

8. Per contra, the learned Additional Public Prosecutor would submit that the defacto complainant is the parent of the victim who is 9 years old boy, who was dragged by the petitioner/accused and caused penetrative sexual assault by tying the boy. On hearing noise of the boy, prosecution witnesses eye witnessed the occurrence and the petitioner criminally intimidated them. The defacto complainant/PW.1 victim boy PW2 and eye witnesses clearly deposed about the



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occurrence. Medical officer's evidence also corroborated the offence. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. Therefore, he strongly opposed to grant suspension of sentence.

9. 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. The petitioner stated that he has been falsely implicated in this case upon inimical affairs. On perusal of records and judgment of the trial Court, it is clear that the evidence of the defacto complainant and victim boy as P.W.1 and P.W.2 was cogent and does not suffer from any infirmity. PW2 deposed that he was tied with rope by the accused for commission of offence. Medical evidence also shows the injuries over the body of boy. The Trial Court came to the conclusion not only based on the evidence of P.W.1 and P.W.2 but also based on other material including the medical evidence. The contention of the learned counsel for the petitioner raised in this petition that he was falsely implicated in this case is a matter for consideration in the appeal. The petitioner is in jail only from 23.06.2023 against total conviction of 14 years.



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10. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, this court is not inclined to suspend at this stage and if he is released on bail, there is a possibility of making trouble to the victim in future and also this is not a fit case to exercise the jurisdiction of suspension of sentence.

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

sd/-

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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
SHENKOTTAI POLICE STATION,
TENKASI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.



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

ORDER
IN
CRL MP(MD) No.16244 of 2023
in
CRL A(MD)No.740 of 2023
Date :04/01/2024

SS/DD/SAR- /10/01/2024/7P/5C

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