



Crl.M.P.(MD) No.17213 of 2023

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

Thursday, the Twenty Eighth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) No.17213 of 2023

in

Crl.A(MD) No.1076 of 2023

DALVIN

... PETITIONER/ APPELLANT/
SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THOOTHUKUDI
(CRIME NO. 39 OF 2021)

... 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 sentence imposed on the petitioner vide judgment dt. 30.10.2023 made in Spl S.C no. 47 of 2022 on the file of the Mahila court / Additional POCSO Court, Thoothukudi and enlarge the petitioner on bail pending disposal of the criminal Appeal.

PRAYER IN Crl.A(MD) No.1076 of 2023:

To call for the records set aside the Judgment dated 30.10.2023 made in Spl.S.C.No.47 of 2022 on the file of the Mahila Court/Additional POCSO Court, Thoothukudi.



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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.MAYILVAHANA RAJENDRAN.C, Advocate for the petitioner and of MR.M.MUTHUMANIKKAM, 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 Judge, Mahila Court/Additional POCSO Court, Thoothukudi, in Spl.S.C.No.47 of 2022 dated 30.10.2023 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the accused/petitioner, who is a married person, induced the victim girl, who has not completed 18 years at the time of occurrence, by taking her to his house and forcibly indulged in aggravated penetrative sexual assault. Based on a complaint, the respondent police has registered FIR against the petitioner in Crime No.39 of 2021 on the file of the respondent police and the same was taken on file in Spl.S.C.No.47 of 2022 before the learned Judge, Mahila Court/Additional POCSO Act Cases, Thoothukudi. The Court below has found the accused guilty for the offences punishable under Section 9 of the Prohibition of Child Marriage Act, 2006 and Sections 3(a) r/w. 4(1) of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act']



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for the sake of brevity]. The petitioner was convicted and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- with 6 months Simple Imprisonment in case of default for the offence punishable under Sections 3(a) r/w. 4 (1) of POCSO Act. In respect of Section 9 of the Prohibition of Child Marriage Act, 2006, the petitioner was convicted and sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.5,000/- with one month Simple Imprisonment in case of default. The trial Court ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submits that there is a delay of 15 days in lodging the complaint before the respondent police and the said delay was not explained properly by the prosecution. Even as per the prosecution version, there is no evident to show that the petitioner married P.W.1 on 24.09.2021, however, the petitioner was convicted by the trial Court under the provisions of the Prohibition of Child Marriage Act. The deposition of P.W.8/Doctor, who conducted the medical examination of the victim girl, reveals that she was in love with the petitioner herein for the last one and a half years and that the possibility of having engaged in sexual intercourse cannot be ruled out. Learned counsel for the petitioner further submitted



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that P.W.2 in her cross-examination stated that the respondent police obtained her signature in the blank paper and she also admitted that owing to the dispute pending between her and wife of the petitioner, the complaint was lodged before the respondent police and thereby, prays for suspension of sentence of the petitioner.

4. Per contra, Mr.M.Muthumanikkam, learned Government Advocate (Crl. Side) would submit that there are enough materials available on record against the petitioner and hence, opposed for allowing the petition.

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. Considering the arguable points of the petitioner and the facts and circumstances of the case, this Court is of the prima facie view that the sentence is to be suspended pending this Appeal.

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Judge, Mahila Court/Additional POCSO Court,

<https://www.mhc.tn.gov.in/judis>



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Thoothukudi, in Spl.S.C.No.47 of 2022 dated 30.10.2023 alone is suspended, subject to

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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 Mahila Court/ Additional POCSO Court, Thoothukudi;

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;

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., Mahila Court/ Additional POCSO Court, Thoothukudi.

v) On breach of any of the aforesaid conditions, the Mahila



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Court/Additional POCSO Court, Thoothukudi, is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Special Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]; and

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A of IPC.

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

sd/-
28/03/2024

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12/04/2024
Sub-Assistant Registrar (CS -I/ II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN

TO

1.THE JUDGE, MAHILA COURT/
ADDITIONAL POCSO COURT, THOOTHUKUDI,



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

3.THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.

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

+1. C.C. to M/S.MAYILVAHANA RAJENDRAN.C Advocate SR.No.3998,DATED
01.04.2024

ORDER
IN
Crl.M.P.(MD) No.17213 of 2023
in
Crl.A(MD) No.1076 of 2023
Date :28/03/2024

RK (12/04/2024) 7P / 6C

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