



CRL MP(MD) No.17570 of 2023

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

Wednesday, the Third day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.17570 of 2023

in

CRL A(MD)No. 826 of 2022

VAIRAMUTHU

... PETITIONER/APPELLANT

Vs

**THE INSPECTOR OF POLICE
SATTUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.527 OF 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 Suspend the Sentence imposed on the Petitioner in Spl.SC.No.62 of 2019 on the file of the Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur, dt.7.7.2022 and enlarge the Petitioner on bail pending disposal of the Criminal appeal before this Hon'ble Court.

Prayer in Crl A(MD)No. 826 OF 2022:

tO Admit the Criminal Appeal and to call for the records and to set aside the judgment of conviction imposed on the appellant in respect of Spl.s.C.No. 62 of 2019, dated 07.07.2022 on the file of the Special Court for Exclusive Trial for POCSO Act cases, Virudhunagar District at Srivilliputhur.



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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.VINAYAGAN.K, Advocate for the petitioner and of MR.K.SANJAY GANDHI, Government Advocate on behalf of the Respondent, the court made the following order:-

Reserved on : 19.12.2023

Pronounced on : 03 .01.2024

The petitioner has filed this petition to suspend the sentence imposed against him by the Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Spl.S.C.No.62 of 2019 by judgment dated 07.07.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

On 06.10.2019 at about 8.30 p.m. while the victim girl aged about 11 years along with her parents was purchasing articles in Dhanalakshmi Store, Pullion Bazaar, Sivakasi the accused by standing behind the victim misbehaved and committed sexual assault on her by forcibly touching her breast with his both hands. On the basis of complaint given by her mother/P.W.1, FIR was registered in Crime No.527 of 2019 for the offence under Section 9(m) and 10 of POCSO Act, 2012. P.W.9 - Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offences under sections stated above.



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3. To prove the charge, the prosecution examined 9 witnesses as P.W.1 to P.W.9 and marked 12 exhibits as Ex.P1 to Ex.P12 and no MO was marked. On the defence side, no witness was examined and no exhibit was marked. One Court document was marked as Ex.C1. After considering both side evidences and both side arguments, the Trial Court has found the petitioner guilty for the offence under Section 9(m) r/w 10 of POCSO Act, 2012 convicted and sentenced the petitioner to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year by passing impugned judgment dated 07.07.2022.

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

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent.

6. The learned counsel for the petitioner has submitted that this is the second petition. The earlier petition in Crl.M.P(MD) No.14975 of 2022 was dismissed on

20.12.2022. The P.W.1 and P.W.3 are parents of the victim/P.W.2. The eyewitnesses

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P.W.4 and P.W.5 turned hostile. The accused was attacked and he was admitted into hospital in unconscious state. The prosecution has not explained the injury sustained by the accused. The arrest of the accused is also doubtful. The victim was not hospitalized and no medical evidence was let in to prove the sexual assault on the victim. The petitioner is in prison for more than 20 months. The petitioner is married man and has three years old child. 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 Government Advocate (Criminal Side) would submit that the petitioner stood behind victim caused forcible sexual assault on the victim, who is aged 11 years and studying 6th std. The victim as P.W.2 has clearly deposed about the commission of offence by the petitioner. In this nature of case, the evidence of victim is sufficient and no need to corroborate her evidence. The Trial Court has correctly appreciated the evidence and correctly passed the judgment convicting the accused as stated therein. The incarceration period is not a ground for bail. The petitioner has not stated any changed circumstances after dismissal of earlier bail except the averment that he has a fair chance in the appeal. Therefore, he strongly opposed to grant suspension of sentence and bail.



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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 this Court to certain grounds of defence that the independence eye witnesses examined were turned hostile, there is no medical evidence. Further, the learned counsel for the petitioner mainly argued that the petitioner sustained injury and was admitted in the hospital at the time of the alleged arrest, so, the arrest is doubtful. There is no explanation offered by the prosecution regarding the injury sustained by the petitioner and the petitioner has a fair chance of succeed in the appeal. However, these are to be decided while deciding the appeal on merits. At the same time, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2022 and the same is not likely to be taken up for final hearing in the near future. The petitioner is in prison for more than 20 months against the conviction of 5 years. In the above circumstances and also considering incarceration period of petitioner, 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

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imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

- (i) The petitioner is ordered to be released on bail on his executing 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, Virudhunagar District at Srivilliputhur;
- (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.

sd/-

03/01/2024

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03/01/2024

Sub-Assistant Registrar

(C.S.I /II /III /IV)

Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD



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TO
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- 1 THE SESSIONS JUDGE
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
 - 2 THE INSPECTOR OF POLICE
SATTUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
 - 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to MR.K.VINAYAGAN, Advocate SR.No.117(I) dt: 04/01/2024

ORDER
IN
CRL MP(MD) No.17570 of 2023
in
CRL A(MD)No. 826 of 2022
Date :03/01/2024

PKP/SAR- /03.01.2024/ 7P/ 6C

Madurai Bench of Madras High Court is issuing certified
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