



CRL MP(MD) NO. 13613 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19-02-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) NO. 13613 of 2024

in

CRL A(MD)NO.150 of 2024

Jothi Murugan
S/o. Palanisamy,
2, Narayandoss Nagar, Round Road,
Balakrishnapuram, Pudur,
Dindigul District.
Now confined at,
Central Prison, Madurai District.

Petitioner(s)

Vs

The State of Tamil Nadu,
Rep. by The Inspector of Police,
Thadikombu Police Station,
Dindigul.

Respondent(s)

For Petitioner(s): Mr.G.Karuppasamypandiyan
For Respondent(s): Mr.P.Kottaichamy,
Government Advocate (Crl.Side)

ORDER

The petitioner is a correspondent of an educational institution viz, a nursing college. He has been charged that taking advantage of his position as the Correspondent of the college, he has sexually abused a student studying in the college. He has been found guilty and convicted for the offence under Section 9(f) r/w Section 10 of the POCSO Act, in Spl.SC.No.108 of 2023 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dindigul with



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sentence of seven years rigorous imprisonment and to pay a fine of Rs.75,000/- and in default of payment of fine, to undergo one year simple imprisonment. In this case along with this petitioner, the Woman Warden of the college / A2 was also convicted. Challenging the conviction, they have filed an appeal in CrI A(MD)No.150 of 2024 and also filed an application in CrI MP(MD)No.2237 of 2024 to suspend the sentence pending the appeal.

2.This Court while entertaining CrI MP(MD)No.2237 of 2024 filed to suspend the sentence, by order dated 01.03.2024 has accepted the contention of the learned Counsel with regard to accused No.2 alone and suspended the sentence imposed on her. However the Court has not recorded any findings as against this petitioner / A1. Thereafter this Court considered the case of this petitioner in detail and dismissed the said application by order dated 05.09.2024 as against this petitioner / A1. Therefore, this second petition is filed to suspend the sentence pending the appeal.

3.The learned Counsel for the petitioner submits that the petitioner had contested in the Lok Sabha election during the year 2019. Therefore, he gained political rivalry and his political rival has instigated the victim girl to lodge a false complaint as against him. He further submits that the age of victim girl has been projected as 17 years at the time of incident. However the prosecution has not produced any document to prove the age of the victim girl as 17 years. He further



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submits that the petitioner is in jail from 08.04.2022, the date of conviction and he has completed 2 years and 10 months of the sentence, which is substantial period of sentence imposed on him and therefore, as per the ratio laid down by the Hon'ble Supreme Court in Criminal Appeal No.4258 of 2024 dated 18.10.2024 in the case of Badshah Majid Malik Vs Directorate of Enforcement and ors, if the appellant has undergone $1/3^{\text{rd}}$ of the maximum period of imprisonment provided for the offence under which he is convicted, then he is entitled the benefit of suspension of sentence provided under Section 479 of BNSS and it cannot be denied. Therefore, the learned Counsel for the petitioner prayed to suspend the sentence considering the period of incarceration of the petitioner.

4.The learned Government Advocate (CrlSide) appearing for the State submits that the victim was 17 years old at the time of occurrence and it is proved by the secondary school leaving certificate Ex.P10. He further submits that the petitioner being the Correspondent of the college, taking advantage of his position has exploited the student / daughter of the single parent and due to this she has discontinued the course. He also submits that apart from this victim, the petitioner has also exploited yet another girl and on the complaint of that victim girl he was charged and tried, however he was acquitted by the trial Court. He further submits that Section 479 of BNSS would not be applicable to this case, since the POSCO Act is

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a Special Act. Therefore, he objects to suspend the sentence. He further submits that the typed set of papers is ready and the appeal itself be taken for final disposal

5.This Court considered the rival submissions made and perused the materials placed on record.

6.The petitioner being the correspondent of a nursing college has sexually exploited a student, who joined the nursing course with a hope and dream, taking advantage of her position that she is a daughter of a single parent. Considering the nature of allegation, the objection made by the learned Government Advocate (Crl Side), there is no change in circumstance from the dismissal of the earlier application to suspend the sentence, the typed set of papers in the main appeal is made ready and the prosecution is ready to proceed with the appeal itself, therefore this Court is not inclined to entertain this application to suspend the sentence. Accordingly this petition is dismissed.

7.Since the petitioner is in jail, the Registry is directed to post the main appeal for final disposal on 27.02.2025.

sd/-
19/02/2025

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20/02/2025

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO
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1 THE INSPECTOR OF POLICE, THADIKOMBU POLICE STATION, DINDIGUL.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-1857[I] dated
20/02/2025)

ORDER
IN
CRL MP(MD) NO. 13613 of 2024
in
CRL A(MD)NO.150 of 2024
Date :19/02/2025

RS/IT/SAR-(20.02.2025) 5P 5C
Madurai Bench of Madras High Court is issuing
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