

CRL.MP(MD).No.13276 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2025

CORAM:

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL.MP(MD).No.13276 of 2024

in

CRL A (MD).No.690 of 2024

Narayana Swamy

.. Petitioner

Vs.

The State through the Inspector of Police,
All Women Police Station, (Rural),
Palani.
(Crime No. 02 of 2023)

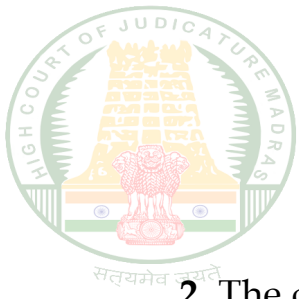
.. Respondent

For Petitioner : Mr.S.Suresh Kumar Isaac Paul

For Respondent : Mr.P.Kottaichamy,
Government Advocate (Crl Side)

ORDER

The petitioner was found guilty by the Additional Sessions Judge, Special Court (POCSO Act Cases), Dindigul District in Spl.SC.No.157 of 2022, convicted and sentenced to 5 years rigorous imprisonment and to pay a fine of Rs.5,000/- with default clause for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012.



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2. The case of the prosecution is that on 03.04.2023 at about 6.00 p.m., when the victim girl was playing in front of her house, she was taken by the petitioner to his house and misbehaved with her sexually. The case was registered for the offences under Section 294(b) IPC and Section 10 of the Protection of Children from Sexual Offences Act, 2012. In conclusion of the Trial, this petitioner was found guilty for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 convicted as stated above.

3. As against the conviction, the petitioner has filed an appeal before this Court in CRL A (MD).No.690 of 2024 and the same was admitted by this Court. The petitioner has also filed this miscellaneous petition to suspend the sentence as against him. The petitioner has also filed an earlier application for suspension of sentence as against him in Cr.MP.(MD).No.8690 of 2024, the same was dismissed by this Court *vide* earlier order dated 25.09.2024.

4. The learned counsel for the petitioner by referring to the evidence of P.W.1, P.W.2 and P.W.3 has pointed out certain contradictions to their evidence.

5. The learned Public Prosecutor by referring to the 164 Cr.P.C. statement of the victim girl, which was recorded after three (3) days from the date of occurrence, submits that even according to the victim girl, the petitioner said to have kissed her on her cheek and she has attempted to remove her dress, this was felt by the child as



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that of a bad touch and has reported the same to her mother.

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6. The learned counsel for the petitioner submits that the age of the petitioner is 60 years old and the age of the victim child is 11 years. Even on assumption that he has kissed the child without any intention, it could not be protracted as a bad touch, and the petitioner is in jail for the past eight (8) months. Therefore, he requested for suspension of the sentence imposed as against the him.

7. The learned Public Prosecutor submits that the earlier application filed by this petitioner was dismissed *vide* earlier order dated 25.09.2024 and there is no change of circumstances, he also submits that the prosecution has established its case through the evidence of P.W.2 and P.W.3, therefore, the learned Public Prosecutor submits that it is not a fit case for suspension of sentence.

8. This Court has considered the rival submissions advanced by the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondents and perused all the materials available on record.

9. The petitioner is aged about 60 years old and the victim is aged about 11 years old. The case of the prosecution is that the petitioner has made a bad touch on the victim girl. The petitioner has projected certain political motive for the de-facto complainant to lodge this complaint against the petitioner. The petitioner's counsel has also pointed out certain contradictions from the evidence of P.W.1 to P.W.4.



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Though, the earlier application was dismissed on 25.09.2024, the type set of papers are not made ready and the petitioner is in jail for more than eight (8) months. Considering that the petitioner is having some arguable points in the main appeal and it could not be taken up for final disposal immediately, this Court is inclined to suspend the sentence pending the criminal appeal.

10. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Learned Additional Sessions Judge, Special Court (POCSO Act Cases) Dindigul District and on further condition that the petitioner shall stay in Villupuram and report before the Police Station Villupuram West Station daily at 10.30am.

sd/-
24/02/2025

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/02/2025
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

NST



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TO

1 THE ADDITIONAL SESSIONS JUDGE,
SPECIAL COURT(POCSO ACT CASES),
DINDIGUL.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, (RURAL),
PALANI, DINDIGUL DISTRICT.

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI

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

COPY TO:

THE INSPECTOR OF POLICE,
VILLUPURAM WEST POLICE STATION,
VILLUPURAM.

+1 CC to M/s.S.SURESH KUMAR ISAAC PAUL, Advocate (SR-2010[I] dated
24/02/2025)

ORDER
IN
CRL MP(MD) No.13276 of 2024
in
CRL A (MD).No.690 of 2024
Date :24/02/2025

SS/SAR- /21/02/2025/ 5P/7C

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