



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

Wednesday, the Twentieth day of July Two Thousand Sixteen
PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP(MD) No.1491 of 2016

IN

CRL A(MD) No.55 of 2016

MURUGAN

... APPELLANT/1st ACCUSED

Vs

THE STATE OF TAMIL NADU REPRESENTED BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.
CR. NO.12/2013

... RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Learned Sessions (Fast Track Mahila Court) Nagercoil Kanyakumari District dated 29.1.2016 in S.C. No.113 of 2013 and enlarge the petitioner on bail pending disposal of the main appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S N.DILIP KUMAR, Advocate for the petitioner and of Mr.P.KANDASAMY, Government Advocate (Crl.side) on behalf of the Respondent the court made the following order:-

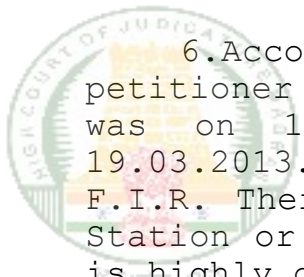
A1 in the Sessions Case in S.C.No.113 of 2013 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court, Nagercoil seeks suspension of his sentence of imprisonment.

2.In the said Court, A1 was convicted under Section 4 of the Protection of Children from Sexual Offences act, 2012 (POCSO Act) read with Sections 7 and 8 of the said Act and sentenced to 7 years R.I. and fined Rs.5,000/- in default 6 months R.I.

3.P.W.2 is the daughter of P.Ws.1 and 3 and grand-daughter of P.W.5. During March, 2013, P.W.2 was a minor child far below 18 years (see Ex.P.10 Birth Certificate).

4.In the same vicinity, the accused is having his shop. Opposite to that he is having his house.

5.A1 is accused of having sexually abused P.W.2 on 12.03.2013, when she had gone to A1's shop to buy chocolate. Relying on the evidence of P.W.2, her parents and grand mother and other corroborating evidence, the trial Court has convicted and sentenced the accused as stated already.



6. According to the learned counsel for the petitioner, petitioner has been implicated in this case. The alleged occurrence was on 12.03.2013. However, the F.I.R. was lodged only on 19.03.2013. There is inconsistency as to the timing and lodging of F.I.R. There is confusion whether it was lodged with Kottar Police Station or All Women Police Station, Nagercoil. F.I.R. in this case is highly doubtful.

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7. The learned counsel for the petitioner also contended that P.W.11 (doctor) has not noticed evidence of any sexual violation having been perpetrated on the person of P.W.2. P.W.11 found no external injury on P.W.2.

8. The learned counsel for the petitioner further contended that there is strong motive for P.Ws.1 and 3 to implicate the petitioner in this case. As between P.Ws.1 and 3, it was love marriage. Their marriage was sought to be performed on 14.10.2007 in a temple where A1 was priest and as then itself P.W.1 was pregnant A1 has objected to perform their marriage. Further, earlier P.W.1's father's elder brother was priest in the temple, however, he was replaced by A1. There was enmity between P.W.1 and A1. In such circumstances, this case has been foisted against A1 and his wife/A2.

9. The learned counsel for the petitioner further contended that prosecution has failed to establish its case beyond all reasonable doubts. There is prima-facie case in favour of the petitioner. He will not abscond. In the circumstances, he may be granted appeal bail.

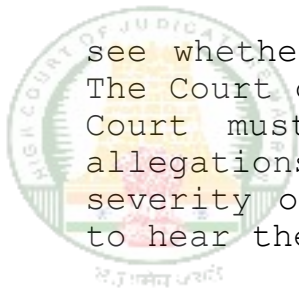
10. The learned Government Advocate (Criminal side) filed detailed counter. He also contended that delay in lodging the complaint in this case is understandable. It cannot be a ground to disbelieve P.W.2. P.W.2 has narrated the entire occurrence and the violence meted out to her. Her evidence is cogent, believable and acceptable. It has also been corroborated by P.Ws.1, 3, 5 and other witnesses.

11. The learned Government Advocate (Criminal side) further contended that the motive suggested is highly imaginary. Petitioner has sexually abused a girl child. Very serious allegations have been made against him. There is voluminous evidence against him. There is no prima-facie case in his favour. He does not deserve grant of appeal bail.

12. I have anxiously considered the rival submissions and perused the averments in the appeal bail petition and in the counter filed by the respondent, judgement of the trial Court and the relevant materials on record.

13. Now, in the facts and circumstances, the question is whether the petitioner/A1 could be granted appeal bail.

14. Grant of appeal bail pending consideration of the appeal is provided in Section 389(1) Cr.P.C. At this stage, the Court has to



see whether there is prima-facie case in favour of the petitioner. The Court cannot approach this petition as main criminal appeal. The Court must also see the nature and type of the offence, the allegations alleged against the petitioner, evidence adduced, severity of the punishment imposed and availability of the accused to hear the appellate judgment.

15. In (sexual) offences against women and children the approach of the Court should be different from that of other offences. The evidence of victim in sexual violence cases should be evaluated like the evidence of an injured witness. However, more care and caution is needed when the victim is a child as they could be tutored and made to speak parrot like.

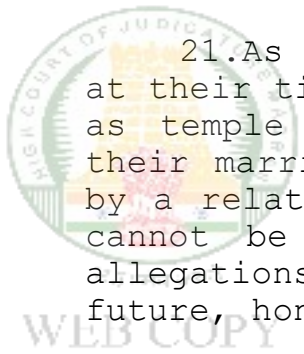
16. The Court should see the substratum of the evidence of child witness, its cogency and acceptability. Above all, the evidence must be unimpeachable and inspire confidence in the witness. It is pertinent to note that since the punishment prescribed under POCSO Act is very serious the Court is serious of proving the charges levelled against the accused.

17. In the instant case, it is not in doubt that P.W.2 is a child within the meaning of POCSO Act (See ex.P.10). A1 is an elderly man. He has potentiality to perform sexual act (See P.W.15 and Ex.P.5 Certificate).

18. Petitioner is having his shop in the vicinity of P.W.1's house. On 12.03.2013, after 9 a.m., P.W.1 had left her house giving Rs.1/- to P.W.2. Thereafter, according to P.W.2, when she had gone to A1's shop to buy chocolate, A1 took her by her hand to his house situate opposite to his shop and committed heinous sexual/ unnatural act upon her, he had put his private part in her mouth and rubbed it on her private part and chest. P.W.2 came to her house, narrated the incident to her grand-mother (P.W.5), shortly thereafter, when P.W.1 came, the entire occurrence was revealed to her.

19. P.W.3, the father of P.W.2 is working in Tiruchirapalli. After the occurrence, P.W.1 went to A1's house and questioned him. He flatly denied. P.W.1 noticed abnormal condition in P.W.2 and she was continuously weeping. In the circumstances, P.W.1 informed her husband on 18.03.2013. He came to his house and went to A1's house and questioned him about the incident, however, he denied it. In the circumstances, on 19.03.2013, a police complaint was lodged by P.W.3 to P.W.18 S.I. of Police, All Women Police Station, Nagercoil and the case has been investigated by P.W.19 Inspector of Police.

20. Of course, there is few days delay in lodging the police complaint. In these type of offences due to the future of the girl child, social inhibition and to protect her privacy and future, and the family name and honour, parents of victim girl will not immediately expose the incident and go to police and they file the police complaint after much thought and persuasion. In these type of cases delay is understandable. Further, in this case, why the complaint has been lodged on 19.03.2013 has been explained.



21.As between P.W.1 and P.W.3 there may be love marriage. Even at their time of marriage itself P.W.1 might have been pregnant. A1, as temple priest in such circumstances might not have permitted their marriage in the temple. Further, A1 might have been replaced by a relative of P.W.1 as the temple priest. For these reasons it cannot be accepted that P.Ws.1 and 3 went on to make serious allegations as against the petitioner by involving the very life, future, honour and privacy of their female child.

22.In view of the foregoing reasons, petitioner has no prima-facie case in his favour. He does not deserve grant of appeal bail.

23.In the circumstances, this petition is dismissed. However, it is made clear that the observations made in this order are made for the limited purpose of disposing of this appeal bail petition and it has nothing to do with the disposal of the main criminal appeal.

24.Since, bail has been denied to the appellant, the Registry is directed to expedite the receipt of the case records from the trial Court, if it is not already received and Registry shall also take expeditious steps to prepare the booklet so as to make the Criminal Appeal ripe for disposal.

sd/-
20/07/2016

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Sub-Assistant Registrar (C.S.)

TO

1. THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
2. THE SESSIONS JUDGE,
(FAST TRACK MAHILA COURT),
NAGERCOIL, KANYAKUMARI DISTRICT.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S N.DILIP KUMAR Advocate SR.No. 38073

ORDER IN
CRL MP(MD) No.1491 of 2016
IN
CRL A(MD) No.55 of 2016
Date :20/07/2016