



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

Thursday, the Seventeenth day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.2497 of 2016
IN
CRL A(MD) No.96 of 2016

BALUSAMY

... PETITIONER/APPELLANT

Vs

STATE, REP.BY
INSPECTOR OF POLICE
PASUPATHIPALAYAM POLICE STATION,
KARUR.

(CRIME NO. 591/2014)

... RESPONDENT/RESPONDENT

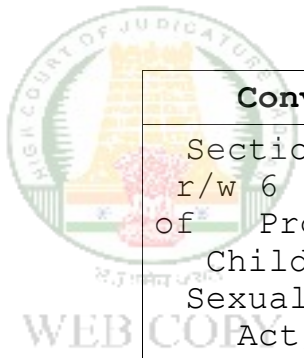
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of Imprisonment imposed by the learned Sessions Judge - Mahalir Fast Track Court, Karur in Spl.S.C.No. 10 of 2015 by the Judgement dated 04.12.2015 and enlarge the Petitioner / Appellant on bail, pending disposal of the above said Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S S.DEENADHAYALAN, Advocate for the petitioner and of MR.P.KANDASAMY, learned Government Advocate (Crl.Side) appearing for the respondent the court made the following order:-

Orders Reserved on 03.11.2016

This Criminal Miscellaneous Petition has been filed by Mother of the Petitioner / Appellant, who is A3 in this case, praying to suspend the sentence of imprisonment imposed against the petitioner, by the learned Sessions Judge, Mahalir Fast Track Court, Karur in Spl.S.C.No.10 of 2015, dated 04.12.2015, pending disposal of the above Criminal Appeal.

2. After trial, he has been convicted and sentenced as under:



Conviction	Sentence
Section 5(1) (m) r/w 6 (2 counts) of Protection of Children from Sexual Offences Act, 2012.	For each count 10 Years R.I. + For each count, Fine Rs.1,000/-, i/d 3 Months S.I.
Section 506(ii) IPC.,	1 Year S.I + Fine Rs.500/- i/d 1 Month S.I.

3. The Court heard the submission of Mr.S.Deenadhayan, the learned counsel appearing for the petitioner / accused and Mr.P.Kandasamy, the learned Government Advocate (crl.side) appearing for the respondent and also perused the materials available on record.

4. The Petitioner / Appellant was convicted on 04.12.2015 and he is confined in Central Prison, Tiruchirappalli, from the date of sentence.

5. Aggrieved by the order of the trial Court, the Criminal Appeal has been preferred on behalf of the accused. Fine amount imposed by the trial Court has been paid and receipt also filed to that effect.

6. The victims in this case are two children i.e., one male child, aged about 6 years, and another one is female child, aged about 3-1/2 years old. The victim male child (P.W.15) was studied First Standard, on the date of occurrence. The confession statement of P.W.15 was recorded under Section 164 (5) Cr.P.C. The victim children or their parents have no motive to falsely implicate the accused, who is residing in the same street, by making serious allegation of aggravated sexual assault upon the victim children, below the age of 12, by the accused. The accused is well known to the victim children and their parents. The evidence of victim male child (P.W.15) should not be ignored or rejected, on the basis of minor discrepancies and contradictions. Accused convicted for the charge of aggravated penetrative sexual assault against both the victim children, below the age of 12 years, by penetrating his penis, to any extent, into the mouth of both victim children. The victim children are the best persons to say about the sexual assault of the accused. As per Section 29 of Protection of Children from Sexual Offences Act, 2012, the contradictions not proved by the accused during evidence.

7. Considering the above facts and circumstances of the case and also the nature of accusation against the accused, by P.W.15, in particular, this Court is not inclined to order of grant the relief of suspension of sentence. Accordingly, this Criminal Miscellaneous Petition is dismissed.



8. At this juncture, this Court makes it clear that the observations made in this order is only for the purpose of disposal of this Criminal Miscellaneous Petition for suspension of sentence alone.

sd/-
17/11/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SESSIONS JUDGE-
MAHALIR FAST TRACK COURT, KARUR
- 2 THE INSPECTOR OF POLICE
PASUPATHIPALAYAM POLICE STATION,
KARUR.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 4 THE SUPERINTENDENT
CENTRAL PRISON, TIRUCHIRAPPALLI

GJM/SS2/AR-2-22.11.16-3P-5C

ORDER
IN
CRL MP (MD) No.2497 of 2016
IN
CRL A (MD) No.96 of 2016
Date :17/11/2016