



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

Tuesday, the Nineteenth day of July Two Thousand Sixteen

PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP (MD) No.5179 of 2016
IN
CRL A (MD) No.233 of 2016

THANGAPANDY

... APPELLANT/SOLE ACCUSED

Vs

STATE REB.BY
THE INSPECTOR OF POLICE
A.W.P.S., THIRUMANGALAM,
IN CR.NO. 3/2006

... 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 execution of sentence in SC No. 388/2006 dated 17.06.2016 on the file of Learned Additional District Sessions Judge (Mahila) Madurai enlarge the petitioner on bail, till the disposal of the Criminal

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

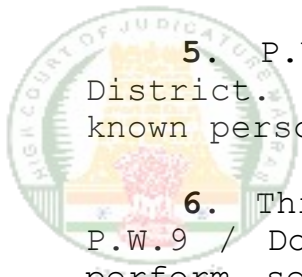
The sole accused in the Sessions Case in S.C.No.388 of 2006, on the file of the learned Additional Sessions Judge, Mahila Court, Madurai, seeks suspension of his sentence of imprisonment.

2. In the said Court, on 17.06.2016, the petitioner was convicted and sentenced as detailed below:

CONVICTION	SENTENCE
376(1) I.P.C.	10 Years R.I. + Fine Rs.10,000/-, i/d 6 Months S.I.
506(ii) I.P.C.	2 Years R.I. + Fine Rs.500/-, i/d 6 Months S.I.

3. Both the sentences were directed to run concurrently. Fine amounts were paid.

4. The accused is accused of having raped P.W.2, then a minor girl, studying 6th Standard.



5. P.W.2 and the accused belongs to Sathankudi in Madurai District. Her brother married the sister of the accused. Both are known persons. They are relatives too.

6. Through P.W.12, P.W.2 being a minor has been spoken to. P.W.9 / Doctor vouchsafed positive potentiality of the accused to perform sexual act. Relying on the evidence of P.W.2 and the corroborative evidence of her parents P.Ws.1 and 3 and P.Ws.15, 16, 21, the Trial Court had convicted and sentenced the accused as stated already.

7. The learned counsel for the petitioner contended that there is unreasonable delay of 3 months in lodging the F.I.R. P.W.2 detailed the occurrence and named her rapist to P.W.22 / Investigation Officer, which is the real F.I.R., which contained the name of the actual rapist, however, it has been suppressed.

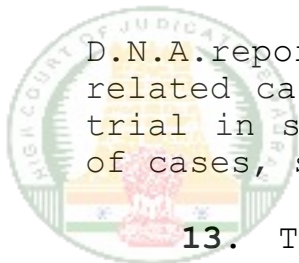
8. The learned counsel for the petitioner further contended that there is a peculiar circumstance in this case. P.W.2's brother Pandi had married Pandiselvi, sister of the accused. In order to marry the accused, P.W.2 and her parents have foisted this case against the petitioner.

9. The learned counsel for the petitioner further contended that it is not established beyond all reasonable doubts that then P.W.2 was a minor below 16 years. No School Certificate or her Birth Certificate has been marked by the prosecution.

10. The learned counsel for the petitioner further contended that P.W.22 had taken steps to conduct D.N.A.Test for the accused. But, she did not pursued it. However, the result of Ex.X1 / D.N.A.Report of the Forensic Lab, Chennai and Ex.X2 / D.N.A.Report of Central Forensic Lab, Hyderabad, is that the accused is not the putative father of P.W.2's child. This is an important aspect establishing the innocence of the accused. However, the Trial Court has turned nelson's eye to this vital aspect in this case.

11. The learned counsel for the petitioner contended that the prosecution has failed to establish the charges levelled against the accused beyond all reasonable doubts. There is *prima facie* case in favour of the petitioner. In the circumstances, the petitioner may be granted appeal bail.

12. The learned Government Advocate (Criminal Side) filed counter. The sum and substance of the same is that the evidence of the victim girl / P.W.2 demonstrates that she has been raped by the accused. In a rape case, her evidence is vital and crucial. She was born on 25.07.1992. Then she was studying 6th Standard. As to her date of birth, P.W.12 / School Headmaster also has been examined. The F.I.R. is truly recorded. What was done to P.W.2 came to light after three months. The situation is such that she cannot hide the fact and she has to reveal the entire occurrence to her parents and the Doctor and she had revealed it. There is no acceptable reason to implicate the accused in this case. The



D.N.A. report may tilt the scale in a maintenance case and other related cases, but not so in a rape case, because the scope of the trial in sexual violence offence cases is different. In such type of cases, such a report may not be an acid test

13. The learned Government Advocate (Criminal Side) besides reiterating what was stated in the counter also submitted that the scope of this appeal bail petition under Section 389 Cr.P.C., is very narrow and it cannot be converted a criminal appeal. In this appeal bail petition, petitioner has almost touched what has to be touched during the main criminal appeal itself. By voluminous evidence, prosecution has established the guilt alleged as against the petitioner. There is no *prima facie* case in his favour. He does not deserve for appeal bail.

14. I have anxiously considered the rival submissions, perused the averments in the appeal bail petition, counter filed by the prosecution, the impugned Judgment of the Trial Court and the relevant materials on record.

15. The question is whether the petitioner is entitled to be granted appeal bail?

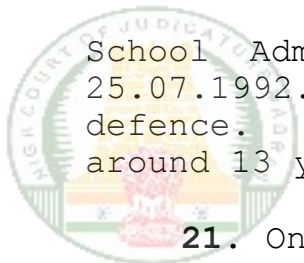
16. Now, we are at the post-conviction stage. The 'presumption of innocence of the accused' during the 'pre-conviction stage' has been replaced by a Judgment of the Criminal Court. The accused has become a convicted person.

17. He seeks (appeal) bail under Section 389(1) Cr.P.C. At this stage, the Appellate Court has to see is there any *prima face* case in favour of the accused. It must also consider the nature of the accusations and the severity of the punishment imposed upon him, whether he is likely to flee away from justice, whether he will be available to hear the judgment of the appellate Court.

18. The accused is alleged to have ravished a minor girl. It is a gender based sexual offence against women. In such type of offences, the evidence of the prosecutrix / victim girl shall be treated as 'evidence of an injured witness'. No corroboration need be insisted upon. Even the sole testimony of the victim is enough to record a conviction. But, her evidence must be of sterling quality. It should be natural, not trotted out of any tutoring and unimpeachable. Her evidence must be believable. There must be acceptable and sustainable reason to discredit her.

19. We have already given the necessary facts, of course, in a nutshell. Let us not duplicate it.

20. On 31.03.2006, at the All Women Police Station, Thirumangalam, in Madurai District, Ex.P1 complaint has been lodged by P.W.1, the father of the victim girl (P.W.2). The rape incident is alleged to have taken place 3 months prior to the said date. Then P.W.2 was studying 6th Standard in the Government School in Sathankudi. P.W.12, the Headmaster of the School, referring to the



School Admission Register, had stated that P.W.2 was born on 25.07.1992. He has also been elaborately cross-examined by the defence. In the circumstances, P.W.2 was found to be a minor girl around 13 years.

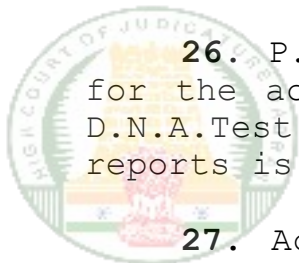
21. On a day, 3 months prior to the lodging of F.I.R., around 6 p.m., when P.W.2 came near the land of the accused, he is alleged to have forcibly took her inside the motor-room, raped her and also criminally intimidated her. She did not reveal this to anyone. On 27.03.2006, when her condition was abnormal and she started vomiting, her mother (P.W.3) took her to Government Hospital at Sathankudi. P.W.7 (Doctor) suspected her to be carrying for 3 months. P.W.7 referred her to the Government Hospital at Thirumangalam for further examination and confirmation test. When P.W.16 (Doctor) in the said hospital, through clinical and lab test, found P.W.2 is having 3 months pregnancy P.W.2 revealed to P.Ws.15 and 16 (Staff Nurse) that accused is responsible for this as he had raped her. Immediately, it became known to P.W.3, thereafter to P.W.1 and on 31.03.2016, P.W.1 lodged Ex.P1 complaint to P.W.22 at the All Women Police Station, Tirumangalam.

22. In the facts and circumstances, it is quite natural that for fear of reprisal from her parents, dear and near one and the villagers, P.W.2 had concealed the incident. But, after 3 months could not hide the shame any more and it has got exposed. In the circumstances, the delay has occurred in lodging the F.I.R.

23. In sexual violence cases, delay in lodging the F.I.R. may not assume signal importance as the offence is perpetrated upon women and children generally will not be exposed immediately because of social inhibitions. It has got so many constraints for the victim and her parents to come out openly that the victim girl has been raped. Therefore, in these circumstances, the accused cannot derive any premium out of the delay occurred in lodging the F.I.R.

24. In this case, P.W.22 received the F.I.R. P.Ws.1 and 3 took P.W.2 to the Police Station. Naturally, P.W.22 is bound to enquire P.W.2 as to what had happened to her. P.W.2 revealed P.W.22 the entire incident. P.W.22 recorded it. P.W.1 signed in it. Of course, on this aspect, the defence tried to have some mileage by contending that the F.I.R. is fabricated and it is subsequently manufactured. In the facts and circumstances it does not sound well.

25. P.W.2's brother Pandi married Durai Pandi's (father of the accused) daughter Pandiselvi. They have become spouses. For that matter it cannot be said that P.W.2 had cooked up this case against her brother's wife's brother. If really she wished to fix the accused and land him in trouble, she could have made the bombshell immediately and she need not have waited for 3 months to expose him. Therefore, the submission of the defence that the evidence of P.W.2 is to be viewed with jaundiced eye does not sound well.



26. P.W.22 seems to have made an attempt to conduct D.N.A.Test for the accused. She did not pursue it. However, in this case, D.N.A.Test was conducted. The result of Exs.X1 and X2 D.N.A. Test reports is that the accused is not the father of P.W.2's child.

27. According to the defence, P.W.2 may be the mother of the child, but accused is not the biological father of her child. This would be a very good argument if it is a maintenance case etc. But, the question is how far it is relevant in a rape case. If we look at the offence of 'Rape' defined in Section 375 I.P.C., D.N.A.Test may not be a relevant factor. Further, for an argument sake, if the victim is a matured major girl and even if there is a positive D.N.A.test report, it cannot be a conclusive decision that she was subjected to sexual intercourse against her will and without her consent. When the victim is below 16 years, that also pale into insignificance because in such cases consensual sex is immaterial. Merely on account of negative favourable D.N.A.Test report, it cannot be concluded that with reference to the victim girl the accused is not the rapist.

28. The accusations against the accused are very serious in nature. He has been severely punished. There is no *prima facie* case in favour of the petitioner. In the circumstances, his case is not a fit case for grant of appeal bail.

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

30. As the accused has been denied bail, the Registrar (Judicial) is directed to expedite the receipt of the Trial Court records and if it is already received he shall expedite the preparation of book-let and make ready the criminal appeal ripe for disposal.

sd/-
19/07/2016

/ TRUE COPY /

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

To

1.The Additional Sessions Judge,
Mahila Court, Madurai.

2.The Government Advocate (Criminal Side),
Madurai Bench of Madras High Court, Madurai.



3.The Deputy Superintendent of Police,
Thirumangalam Sub-Division, Thirumangalam.

4.The Inspector of Police,
All Women Police Station, Thirumangalam.

Copy to:

1.The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1. C.C. to M/S T.K.GOPALAN Advocate SR.No.37947

ORDER

IN

CRL MP (MD) No.5179 of 2016

IN

CRL A (MD) No.233 of 2016

Date :19/07/2016

SDR/AAL-MPA/SAR III/21.07.2016/6P/8C