

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Friday, the Twenty Second day of December Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice S. VIMALA

CRIMINAL MISCELLANEOUS PETITION No.8008 of 2017

IN CRL A.371/2017

PRABAKARAN,

[ PETITIONER ]

Vs

STATE REP.BY  
INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
NAMAKKAL AND DISTRICT.  
CR.NO.1 OF 2016.

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.371 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on him by the learned Sessions (Fast Track Mahila) Judge, Namakkal dated 02.06.2017 made in Special C.C.No.7 of 2016 and enlarge the petitioner on bail pending disposal of the criminal appeal.[CRL.MP.NO.8008/2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.371 of 2017 on the file of the High Court and upon hearing the arguments of M/S.B.KUMARASAMY, Advocate for the petitioner and of MR.V.ARUL ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

The petitioner / appellant / accused was found guilty by the learned Sessions (Fast Track Mahila) Judge, Namakkal, in C.C.No.7 of 2016 and has been convicted and sentenced under the offence that is tabulated as hereunder:-

| <b><i>Convicted under<br/>the Offence</i></b> | <b><i>Sentenced</i></b>                                                                                                                                  |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| u/s 366-A IPC                                 | to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment. |
| u/s 3 (a) r/w 4 of POCSO Act                  | to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment.     |

2. As against the conviction and sentence passed by the courts below, the accused, as appellant, has filed the present Criminal Appeal and pending Appeal, the petitioner / accused has filed this petition seeking to suspend the sentence of imprisonment.

3. The main contention raised by the learned counsel for the appellant is that, only in order to prosecute the accused under the provisions of the POCSO Act, the age of the victim has been falsely introduced stating that the victim was aged 15 and at a later point of time, the prosecution, through the examination of witness, has stated that the age of the victim is 25.

3.1. The fervent plea made by the learned counsel appearing for the petitioner / appellant is that as the appeal is not likely to be taken up for final hearing in the near future, the sentence passed as against the accused must be suspended and he must be released on bail and he would abide by any of the stringent condition that would be imposed by this Court.

4. Heard the learned Additional Public Prosecutor appearing for the sole respondent on the submissions made by the learned counsel for the petitioner.

5. It is relevant to point out that the victim has been studying Plus One and the school certificate in which the victim is now studying has not been produced, but the earlier school certificate has been produced. In this case, there is a doubt regarding the age of the victim. If the victim girl is aged above 18, then the invocation of the provisions of POCSO Act does not arise for consideration at all. The prosecution is duty bound to produce the age certificate, from the schools concerned to show that at the time of incident, the victim girl was below 18.

6. In the light of the doubt raised with regard to the age of the victim girl, taking into consideration the submissions of the learned counsel appearing for both sides, considering the grounds of the Appeal and considering the fact that the Appeal is not likely to be taken up for final hearing, in the near future, this Court is of the view that the petitioner herein may be granted the relief of suspension of sentence .

7. Accordingly, the substantive sentence of imprisonment alone on the petitioner / appellant is suspended and the petitioner is directed to be enlarged on bail, upon the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions (Fast Track Mahila) Judge, Namakkal; and

(ii) The petitioner shall appear before the said learned Judge, on the first working day of every English Calendar month, at 10.30 a.m., pending disposal of the Appeal.

-sd/-  
22/12/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)  
High Court, Madras - 600 104.

TO

1 THE SESSIONS [FAST TRACK  
MAHILA], JUDGE, NAMAKKAL

2 THE CHIEF JUDICIAL MAGISTRATE  
NAMAKKAL [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, SALEM

5 STATE REP. BY  
INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
NAMAKKAL AND DISTRICT.

1 C.C. to M/S.B.KUMARASAMY Advocate on payment of necessary charges SR.NO. 23294

Order

in  
CRL MP.8008/2017

in  
CRL A.371/2017

Date :22/12/2017

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RD 28/12/2017