

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Wednesday, the Thirteenth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice S. VIMALA

CRIMINAL MISCELLANEOUS PETITION No.8391 of 2017

IN CRL A.288/2017

SIVAKUMAR

[ PETITIONER ]

Vs

THE STATE REP BY ITS,  
THE INSPECTOR OF POLICE,  
MATHIKONPALAYAM POLICE STATION,  
DHARMAPURI DISTRICT.  
CR.NO.38 OF 2013.

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.288/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District in S.C.No.71 of 2015 dated 16.12.2016 enlarge the petitioner on bail pending disposal of the Criminal Appeal No.288 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.288/2017 on the file of the High Court and upon hearing the arguments of MR.V.RAJAMOHAN, Advocate for the petitioner and of MR.V.ARUL, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

The petitioner / appellant / sole accused was found guilty by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri District, in S.C.No.71 of 2015 and has been convicted and sentenced under the offence that is tabulated as hereunder:-

| <b><i>Convicted under the Offence</i></b> | <b><i>Sentenced</i></b>                                                                                                                         |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 363 IPC                           | to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo three months imprisonment. |
| Section 376 IPC                           | to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/- in default to undergo three months imprisonment.     |

2. As against the conviction and sentence passed by the court below, the accused, as appellant, has filed the present Criminal Appeal and pending Appeal, the petitioner / accused has filed Crl.M.P.No.8391 of 2017 seeking to suspend the sentence of imprisonment.

3. According to the case of the prosecution, the motive for the occurrence is that the accused who was childless wanted to become a father and that is why, he kidnapped and sexually assaulted the victim. But the evidence indicates that he is the father of the child, born out of his marital life.

3.1. The victim girl has disowned her earlier statement before the Police and the medical evidence did not support the case of the prosecution and the victim has also married after the incident, are contended by the defence.

4. The fervent plea made by the learned counsel appearing for the petitioner / appellant is that the accused is in the custody for more than one year and 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 the accused would abide by any of the stringent condition that would be imposed by this Court.

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

6. Considering the grounds of appeal, considering the facts and circumstances of the case and the submissions made by the learned counsel appearing for both sides, this Court is of the considered view that the petitioner/accused herein is entitled to the relief of grant of suspension of sentence and exemption from surrendering before the trial court.

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 Judicial Magistrate No.1, Dharmapuri; and

(iii) 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/-  
13/12/2017

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 JUDGE,  
FAST TRACK MAHILA COURT,  
DHARMAPURI.

2 THE JUDICIAL MAGISTRATE,  
NO.I, DHARMAPURI.

3 THE CHIEF JUDICIAL MAGISTRATE  
DHARMAPURI. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,  
MATHIKONPALAYAM POLICE STATION,  
DHARMAPURI DISTRICT.

5 THE SUPERINTENDENT,  
CENTRAL PRISON, VELLORE.

6 THE PUBLIC PROSECUTOR,  
HIGH COURT, MADRAS.

+1C.C. to M/S.V.RAJAMOHAN Advocate on payment of necessary  
charges in SR.NO. 22533

Order

in  
CRL MP.8391/2017

in  
CRL A.288/2017

Date :13/12/2017

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MLT-19/12/2017