

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Seventeenth day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice N. AUTHINATHAN

CRIMINAL MISCELLANEOUS PETITION No.9131 of 2017

IN CRL A.438/2017

N.SAKTHIVEL,

[PETITIONER]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
NETTAPAKKAM CIRCLE,
PUDUCHERRY
CR.NO.105 OF 2013.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.438/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the Learned Special Judge at Puducherry made in Spl.S.C.No.5 of 2015, by Judgment dated 14.07.2017 and may be pleased to enlarge the petitioner on bail, pending disposal of the above mentioned Crl.A.No.438 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.438/2017 on the file of the High Court and upon hearing the arguments of M/S.GANESH RAJAN Advocate for the petitioner and of MR.A.TAMILVANAN Government Advocate[pondichery] on behalf of the Respondent the court made the following order:-

Heard both sides.

2. The petitioner/appellant herein is the accused in Special Sessions Case No.5 of 2015 on the file of the learned Special Judge, Puducherry. He was convicted of the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo four years Rigorous Imprisonment and also to pay a fine of Rs.2,000/-, in default, to undergo six months Rigorous Imprisonment. Aggrieved by the judgment of the Trial Court, he has preferred the above appeal. Pending appeal, the present petition has been filed to suspend the sentence.

3. It is alleged by the prosecution that the petitioner herein misbehaved and inappropriately touched the body of the victim girl, who was aged 14, at the time of occurrence, which would amount to sexual assault under the provisions of Section 7 r/w 8 of the

Protection of Children from Sexual Offences Act, 2012.

4. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner would submit that the Trial Court has committed an error in convicting the accused. According to him, there is no material to connect the accused with the commission of offence. He would further submit that the petitioner has been in custody since 14.07.2017. He has also pointed out that the petitioner was on bail during trial and it is a fit case for ordering suspension of sentence.

5. The learned Government Advocate [Puducherry] appearing for the respondent has filed objection. According to him, the Trial Court has relied on the evidence of P.W.3, who has seen the accused near the place of occurrence and heard that the accused misbehaved with the victim girl soon after the occurrence, that the case is supported by his evidence of the victim girl and other evidence and that, the Trial Court has rightly convicted the accused.

6. I have perused the grounds of appeal and the judgment of the Trial Court. It is seen from the judgment of the Trial Court that the victim girl and her father did not support the case of the prosecution. It appears that the case hinges on the evidence of P.W.3, who has seen the accused near the place soon after the occurrence. The victim girl disowned the contents of the statement recorded by the Magistrate under Section 164 Cr.P.C. The antecedents of the petitioner are not reported to be bad and he was on bail during trial. The appeal is not likely to be disposed of within a short time. It is also seen that the accused has raised arguable points. He has been in custody since 14.07.2017 and there is no fear that he will flee from justice. The petitioner was sentenced to a fixed period of four years imprisonment. Taking all these factors into consideration, I am inclined to suspend the sentence of imprisonment alone till the disposal of the appeal and grant bail subject to stringent condition.

7. Hence, the sentence of imprisonment imposed on the petitioner by the Trial Court alone is hereby suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.5,000/- [Rupees Five Thousand only] with two sureties each for a likesum to the satisfaction of the learned Special Judge, Puducherry, within a period of two weeks from the date of this order and on further condition that the petitioner shall report before the Trial Court on the first working day of the English Calender month at 10.30 a.m. until further orders.

-sd/-

17/08/2017

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 SPECIAL JUDGE
AT PUDUCHERRY

2 THE CHIEF JUDICIAL MAGISTRATE
PONDICHERRY[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
PONDICHERRY

4 THE STATE REP BY ITS,
THE INSPECTOR OF POLICE, NETTAPAKKAM CIRCLE,
PUDUCHERRY CR.NO.105 OF 2013.

5 THE SUPERINTENDENT,
CENTRAL PRISON, KALAPET,
PUDUCHERRY

+2 C.C. to M/S.GANESH RAJAN Advocate on payment of necessary
charges SR.NO. 15571

Order

in
CRL MP.9131/2017

in
CRL A.438/2017

Date :17/08/2017

From 7.2.2001 the Registry is issuing certified
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RD 18/08/2017