

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

Tuesday, the Twenty Eighth day of March Two Thousand Seventeen
PRESENT

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

CRL MP(MD) No.2742 of 2017

IN

CRL A(MD) No.102 of 2017

KALIMUTHU,

... PETITIONER/APPELLANT

Vs

The State of TamilNadu,
Represented by its
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, RAJAPALAYAM.
(CRIME NO.03 OF 2010)

... 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 conviction and sentence and grant bail to the Appellant pending disposal of the Criminal Appeal before this Honourable Court against the Judgement in S.C.No.125/2010 on the file of the Chief Judicial Magistrate, Virudhunagar Dt at Srivilliputhur dated 10/10/2013 pending disposal of the above Appeal.

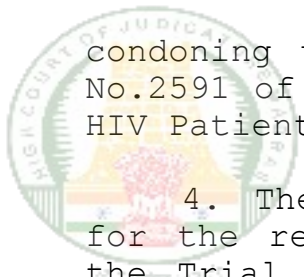
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.R.VENKATESAN, Advocate for the petitioner and of Mr.P.Kandasamy, Government Advocate (Crl.side) on behalf of the Respondent while admitting the Crl.A., the court made the following order:-

The accused in S.C.No.125 of 2010, on the file of the Chief Judicial Magistrate Viruthunagar District, at Srivilliputtur, while challenging his conviction and sentence, seeks appeal bail under Section 389(1) of Cr.P.C.

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

Conviction	Sentence
Section 376 of Indian Penal Code.	7 Years R.I. + Fine Rs.3000/- i/d. 6 Months S.I.
Section 506(ii) of Indian Penal Code .	7 Years R.I.

3. The learned counsel appearing for the petitioner submitted that there are very many legal infirmities in the conviction recorded by the Trial Court and they are required to be revised. The petitioner / appellant is in jail from the date of Judgment ie., 10.10.2013 onwards. The present appeal was taken on file after



condoning the delay on 1165 days, as per the order in Crl.M.P(MD) No.2591 of 2017. He would further submit that the petitioner is a HIV Patient and he is taking treatment in the Jail itself.

4. The learned Government Advocate (Criminal Side) appearing for the respondent states that appreciating the evidence adduced, the Trial Court has rightly convicted and appropriately sentenced the petitioner and there is no prima facie case in favour of the petitioner herein and he has raised serious objection to grant the order of suspension in favour of the petitioner. He would further submit that the appeal may be posted for final hearing in this case.

5. On perusal of the Judgment of the Trial Court it is found that victim is the 13 years of old daughter of the petitioner herein and P.Ws.1 to 3 have corroborated the act of rape by the petitioner upon his only minor daughter twice. The medical evidence also corroborated the act of the petitioner for the commission of offence of rape. Considering the above facts and circumstance of the case and also the evidence adduced before the trial Court, which corroborate the offence of rape committed by the petitioner herein, this Court is not inclined to suspend the sentence imposed on the petitioner by the trial Court.

6. In the result, this Criminal Miscellaneous Petition stands dismissed.

sd/-

28/03/2017

/ TRUE COPY /

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

TO

- 1 THE JUDICIAL MAGISTRATE NO.II, SRIVILLIPUTHUR
- 2 -DO-THRO THE CHIEF JUDICIAL MAGISTRATE
VIRUDHUNAGAR AT SRIVILLIPUTHUR
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI
- 4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, RAJAPALAYAM.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

SM:NDD:SAR 3:5.4.2017:2P/6C

ORDER IN
CRL MP(MD) No.2742 of 2017
IN
CRL A(MD) No.102 of 2017
Date :28/03/2017