

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.11593 of 2017

IN CRL A.209/2017

SARATHKUMAR

[PETITIONER]

Vs

STATE REP. BY
INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SOORAMANGALAM, SALEM DISTRICT.
CR.NO.23/2014.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.209 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner and enlarge the petitioner on bail in connection with judgement dated 14.02.2017 in Spl.SC.No.23 of 2015 on the file of the Sessions Judge, Mahila Court, Salem pending disposal of the above appeal and pass such other further or other orders.[CRL.MP.11593/2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.209/2017 on the file of the High Court and upon hearing the arguments of M/S.R.EZHILARASAN Advocate for the petitioner and of MR. on behalf of the Respondent the court made the following order:-

This Miscellaneous Petition has been filed by the petitioner/accused to suspend the sentence imposed against him in Spl.S.C.No.22 of 2015 on 14.02.2017 by the learned Sessions Judge, Mahila Court, Salem and enlarge him on bail, pending disposal of Crl.A.No.209 of 2017.

2. The petitioner/sole accused has been convicted for the offence under Sections 450, 363, 366 IPC and Section 6 r/w 5(1) POCSO Act, 2012 and sentenced to undergo imprisonment as follows:

Sl.No	Offences	Sentence, Imprisonment and Default Punishment
1.	Section 450 IPC	Ten years Rigorous Imprisonment with a fine of Rs.2,000/- in default to undergo three months Simple Imprisonment
2.	Section 363 IPC	Seven years Rigorous Imprisonment with a fine of Rs.2,000/- in default to undergo three months Simple Imprisonment
3.	Section 366 IPC	Ten years Rigorous Imprisonment with a fine of Rs.2,000/- in default to undergo three months Simple Imprisonment
4.	Sections 6 r/w 5 (1) of POCSO Act	Ten years Rigorous Imprisonment with a fine of Rs.10,000/- in default to undergo three months Simple Imprisonment

Against the conviction and sentence, the petitioner has preferred an appeal Crl.A.No.209 of 2017, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

3. The case of the prosecution is that the petitioner / accused and the victim minor girl / P.W.1, aged about 16 years fell in love with each other and on 09.08.2014, the petitioner, under the pretext of marrying her, had forcible sexual intercourse with her, despite her resistance. On the next day, P.W.1 informed the same to her father and subsequently, lodged a complaint on 19.08.2014, which resulted in registration of an FIR in Crime No.13 of 2014 against the accused and the Trial Court, after considering the oral and documentary evidence, convicted the accused for the offences as stated supra.

4. Learned counsel for the petitioner / appellant would submit that the version of P.W.1 with regard to forcible rape has been falsified by the evidence and report of the Doctor / P.W.9, who conducted the medical examination of the girl. The allegation levelled against the petitioner / accused has not been proved, inasmuch as P.W.1 deposed that the petitioner committed the offence of rape in the Tamil month of Thai, 2013, whereas in the charge, it has been stated that the alleged offence had taken place during the Tamil month of Panguni, 2013 and hence, the commission of offence itself is doubtful. He would further submit that the second allegation of rape by the accused in the grass field of Tital Park has not been established with the available witnesses nearby Tital Park. Contending that there is no strong piece of evidence to connect the accused with the alleged offence, it is prayed that the petitioner is entitled to the grant of suspension of sentence.

5. On the other hand, the learned Government Advocate (Crl.Side) has contended that P.W.1 is the aunt's daughter of the petitioner and

he used to visit her house quite often. The petitioner, taking advantage of his frequent visit, had forcible sexual intercourse with the minor girl on many times, thereby committed the offence of rape. Learned Government Advocate (Crl.Side) has further contended that the prosecution has proved the guilt of the accused beyond reasonable doubt through oral and documentary evidence and the Trial Court, on the basis of the incriminating materials against the petitioner/accused, has rightly convicted him and therefore, the accused is not entitled to the grant of suspension of sentence, as he has committed a serious offence of sexual assault on a minor girl without her consent and therefore, the petition is liable to be dismissed.

6. In the light of the submissions made on either side hereinabove, taking into account the fact that the accused is in jail for the sixteen months; that according to the learned counsel for the petitioner, he has got some arguable points in the appeal and also the fact that the appeal is not likely to be heard in the near future, this Court is inclined to grant suspension of the sentence to the petitioner / sole accused.

7. In the result,

a) this petition is ordered;

b) the sentence imposed against the petitioner in Spl.S.C.No.22 of 2015 on 14.02.2017 by the learned Sessions Judge, Mahila Court, Salem, is suspended till the disposal of Criminal Appeal No.209 of 2017;

c) the petitioner shall be released on bail on his executing a bond for a sum of Rs.10,000/- and two sureties each for a likesum to the satisfaction of the learned Mahila Court, Salem;

d) and on further condition that he shall appear before the said Court weekly twice, viz., on the first and last working days of every week at 10.30 a.m until further orders.

-sd/-
25/06/2018

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 MAHILA COURT
SALEM

2 THE SESSIONS JUDGE, MAHILA
COURT, SALEM

3 THE CHIEF JUDICIAL MAGISTRATE
SALEM[FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SOORAMANGALAM, SALEM DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT
CENTRAL PRISON, COIMBATORE

+1 C.C. to M/S.R.EZHILARASAN Advocate on payment of necessary
charges SR.NO. 11427

Order

in
CRL MP.11593/2017

in
CRL A.209/2017

Date :25/06/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 27/06/2018