

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Nineteenth day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.11971 of 2017

IN CRL A.605/2017

GANESAN

[PETITIONER/APPELLANT/ACCUSED]

vs

STATE BY

[RESPONDENT/COMPLAINANT]

STATION HOUSE OFFICER,
MUTHIALPET POLICE STATION,
PUDUCHERRY.
CR.NO.119 OF 2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.605 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner herein by the learned Special Judge (under the POCSO Act 2012), Principal Sessions Judge, Puducherry made in Special Sessions case No.06 of 2015 by Judgement 07.09.2017 on his file and enlarge him on bail pending disposal of the above appeal on the file of this Honble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.605 of 2017 on the file of the High Court and upon hearing the arguments of MR.L.MAHENDRAN for M/S.SWAMI SUBRAMANIAN, Advocate for the petitioner and of MR.D.BHARATHA CHAKRAVARTHY Public Prosecutor for Pondicherry 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.6 of 2015 on 07.09.2017 by the learned Special Judge (Under the POCSO Act, 2012) Principal Sessions Judge, Puducherry and enlarge him on bail, pending disposal of Crl.A.No.605 of 2017.

2. The petitioner/accused has been convicted for the offences under Sections 10 and 12 of POCSO Act, 2012 and sentenced to undergo imprisonment as follows:

Sl.No	Offences/Accused	Sentence, Imprisonment and Default Punishment
1.	Section 10 of POCSO Act	Five years Rigorous Imprisonment with a fine of Rs.2,000/- in default to undergo six months Rigorous Imprisonment
2.	Section 12 of POCSO Act	Two years Rigorous Imprisonment with a fine of Rs.2,000/- in default to undergo six months Rigorous Imprisonment

Against the conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.605 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 on 15.08.2014 at about 19:00hrs, the petitioner, who is the step father of the victim girl, had exhibited his body in nude manner to the victim minor girl aged about 14 years with full of lust and started misbehaving with her, thereby committed sexual assault on the victim girl by touching her private part, which was questioned by the mother of the victim girl. Subsequently, on the basis of the complaint given by the mother, a case in Crime No.119 of 2014 came to be registered 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 Trial Court has relied upon the evidences of Police Officials and Doctors, who would naturally support the case of the prosecution and the conviction based on their evidence is baseless and un-sustainable. He would further submit that P.Ws.2 and 3 were not eyewitnesses to the occurrence, which is evident from their own depositions and therefore, their evidence need not be given much importance and is liable to be discarded. Contending that there was a delay in registration of the complaint and even the victim girl did not support the case of the prosecution, thereby, leaving it to one's own imagination that the complaint is nothing but a concocted one and no such occurrence had happened at all, it is prayed that the petitioner is entitled to the grant of suspension of sentence.

5. On the other hand, the learned Public Prosecutor (Pondicherry) has contended that the guilt of the accused has been clearly established by the prosecution, through the admission of PW3, who had deposed that at the time of occurrence, the accused had gone to upstairs portion along with the victim girl and started misbehaving with her, by standing in a nude position in front of her. Learned Public Prosecutor (Pondicherry) 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 person is not entitled to the grant of suspension of sentence and 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 about ten months; that according to the learned counsel for the petitioner, since the victim girl herself did not support the case of the prosecution, 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/accused.

7. In the result,

a) this petition is ordered;

b) the sentence imposed against the petitioner in Spl.S.C.No.6 of 2015 on 07.09.2017 by the learned Special Judge (Under the POCSO Act, 2012) Principal Sessions Judge, Puducherry, is suspended till the disposal of Criminal Appeal No.605 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 Special Judge for POCSO Act, Puducherry;

d) the petitioner shall file an undertaking before the Court below that after release, he will not cause any disturbance or hindrance either to his wife / complainant or to the victim girl;

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

-sd/-

19/09/2018

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 SPECIAL JUDGE,
(UNDER THE POCSO ACT, 2012)
PRINCIPAL SESSIONS JUDGE,
PUDUCHERRY

2 THE PUBLIC PROSECUTOR
PUDUCHERRY

3 THE SUPERINTENDENT,
CENTRAL PRISON, KALAPET,
PUDUCHERRY

4 THE STATION HOUSE OFFICER,
MUTHIALPET POLICE STATION,
PUDUCHERRY

+1C.C. to M/S.SWAMI SUBRAMANIAN Advocate on payment of
necessary charges SR.NO.17851

Order

in
CRL MP.11971/2017

in
CRL A.605/2017

Date :19/09/2018

From 7.2.2001 the Registry is issuing certified
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cm 24/09/2018

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