

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eighteenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.12989 of 2017

IN CRL A.654/2017

RAMESH

[PETITIONER]

Vs

STATE REP.BY

[RESPONDENT]

INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ATTUR, SALEM DISTRICT.
CR.NO. 20 OF 2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.654/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner/appellant passed in Special Sessions Case No.10/2015 by the Learned Mahila Judge, Sessions Judge, Mahila Court, Salem dated 28.08.2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.654/2017 on the file of the High Court and upon hearing the arguments of MR.K.VELLAYARAJ Advocate for the petitioner and of M/S.T.P.SAVITHA, GOVERNMENT ADVOCATE [CRL.SIDE] 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.10 of 2015 on 28.08.2017 by the learned Sessions Judge, Mahila Court, Salem and enlarge him on bail, pending disposal of Crl.A.No.654 of 2017.

2. The petitioner/accused has been convicted for the offence under Section 4 of POCSO Act, 2012 and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.25,000/- in default to undergo six months simple imprisonment, with further direction to pay the fine amount to the victim child.

3. Against the said conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.654 of 2017, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

4. The case of the prosecution is that on 04.07.2014 at 6.30pm, when the victim minor girl, aged about 17 years 4 months had gone out of her house for attending her nature call, the petitioner/accused, knowing full well that the victim girl is a minor and on the false promise of marrying her under the guise of loving her, had forcible sexual intercourse with her, thereby committed the offence punishable under the provisions of POCSO Act. Subsequently, on the basis of the complaint given by the victim herself, a case in Crime No.20 of 2014 came to be registered against the accused and thereafter, a charge sheet was filed, which was taken on file in Spl.S.C.No.10 of 2015. The Trial Court, after considering the oral and documentary evidence, convicted the accused for the offences as stated supra.

5. Learned counsel for the petitioner / appellant would submit that the Trial Court has wrongly come to the conclusion that the victim girl is a minor aged about 17 years, whereas as per the admission by her father before the Casualty Medical Officer / P.W.8, her age was mentioned to be 19 years. In the Accident Register / Ex.P3 given by P.W.8, it was observed that there was no external injury on the body of the victim and no blood was found in her private parts and thus, it is clear that the prosecution version is belied and concocted one. He would further submit that in the statement given by the victim girl / P.W.1 herself, it was admitted that she fell in love with the accused and both had consensual sexual intercourse on several occasions and she further voluntarily admitted before the Casualty Medical Officer that even 15 days prior to the occurrence, she had consensual sexual intercourse with him and the said statement has been completely ignored by the Trial Court. Contending that there is a flaw in the prosecution version and there is no proper corroboration of medical evidence, it is prayed that the petitioner is entitled to the grant of suspension of sentence.

6. On the other hand, the learned Government Advocate (Crl.Side) has contended that the guilt of the accused has been clearly established by the prosecution, through various incriminating materials. Pursuant to the sexual assault on the victim minor girl by the accused, the victim girl got fainted and was found lying unconscious in a field. 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, based on the substantial piece of evidence placed before it against the petitioner/accused, has rightly convicted him and therefore, the accused is not entitled to the grant of suspension of sentence and the petition is liable to be dismissed.

7. In the light of the submissions made on either side hereinabove, taking into account the fact that the accused is in jail for about 11 months; that according to the learned counsel for the petitioner, since there was confusion over the age of the victim girl, 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.

8. In the result,

a) this petition is ordered;

b) the sentence imposed against the petitioner in Spl.S.C.No.10 of 2015 on 28.08.2017 by the learned Sessions Judge, Mahila Court, Salem, is suspended till the disposal of Criminal Appeal No.654 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 Judge, Sessions Judge, Mahila Court, Salem;

d) 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/-
18/07/2018

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 JUDGE,
(SESSIONS JUDGE),
MAHILA COURT, SALEM.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ATTUR, SALEM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1 C.C. to M/S.A.P.RAJAPRABHU Advocate on payment of necessary
charges IN SR.NO. 13326

Order

in
CRL MP.12989/2017

in
CRL A.654/2017

Date :18/07/2018

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MLT-23/07/2018