

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Third day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.2234 of 2016

IN CRL A.164/2016

MANIVANAN

[PETITIONER]

Vs

STATE REP. BY
INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ARIYALUR DISTRICT.
CR.NO.3 OF 2015

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.164 OF 2016 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioner in Spl.S.C.No.23 of 2015 dated 29.12.2015 by the Learned Principal Session Court, Ariyalur, Ariyalur District and enlarge the petitioner on bail till the disposal of the above appeal

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.164 OF 2016 on the file of the High Court and upon hearing the arguments of MR.M/S.C.D.JOHNSON, Advocate for the petitioner and of MR.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

The petitioner was convicted for the offences under Sections 341, 366, 323 IPC and Section 4 of POCSO Act 2012 and sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.5,000/- in default, to undergo Rigorous Imprisonment for a period of three months for the offence under Section 4 of POCSO Act, 2012; to undergo Simple Imprisonment for a period of one month and to pay a fine of Rs.200/- in default, to undergo Simple Imprisonment for a period of one week for the offence under Section 341IPC; to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for a period of three months; and to undergo Rigorous Imprisonment for a period of three months and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for a period of

one month for the offence under Section 323 IPC by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur under judgment in Spl.S.C.No.23 of 2015 dated 29.12.2015. Aggrieved against the judgment of conviction and sentence, the petitioner has preferred the present criminal appeal. Pending the appeal, the petitioner/appellant has filed the petition seeking suspension of sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in Spl.S.C.No.23 of 2015 dated 29.12.2015.

2.The learned counsel appearing for the petitioner submitted that after death of the mother of the accused, there was an attempt in the panchayat to make appellant/accused to marry the victim girl or to part away a sum of Rs.1 lakh, failing in all their attempts the present case has been foisted by the defacto-complainant against the petitioner as if he has committed offence under Section 4 of POSCO Act, 2012. It is further submitted by the learned counsel for the petitioner that the alleged college classmates of the victim girl, who are said to have accompanied the victim near Anaivaari Water stream, have not supported the case of the prosecution; that in the absence of any clear evidence regarding abduction and kidnapping of the girl, the offence under Section 366 IPC can not be sustained. Thus, he prayed for suspension of sentence, pending appeal.

3.The learned Government Advocate (Crl.side) has submitted that the victim girl was examined as PW-1 and her mother was examined as PW-2. The Doctor viz., one Dr.Kanmani, who was examined as PW-7, had issued medical certificate to the effect that the victim girl was subjected to penetrative sexual assault. P.W.5 (Fr.Robert, Headmaster of the school) has given the school certificate wherein the age of the victim girl is mentioned as below 18 years. Based on the evidence of P.W.7 & P.W.5 and the other substantial evidence, the trial Court has rightly convicted the accused of all charges. The learned Government Advocate (Crl.Side) has strongly opposed to grant suspension of sentence.

4. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate(crl.side) appearing for the respondent and perused the materials available on record.

5. From a perusal of the records, it is seen that on 20.06.2015, at about 05.00p.m., when the victim girl was returning from her school with her classmates, the accused waylaid the victim and kidnapped her for the purpose of having sexual intercourse. Against her will and wish, he had committed sexual intercourse. Since the victim girl is below 18 years, the petitioner was charged under Section 4 of POCSO Act, 2012 and Section 323 IPC. After completion of investigation, the final report has been filed before the trial Court. After considering the oral and documentary evidence, the trial Court has convicted the accused and sentenced as stated above.

6. It is upon the evidence of PW-1 and PW-2 mother of the victim girl coupled with the evidence of PW-5(Headmaster of the school), who had issued Ex.P4 record sheet and Ex.P3 Education Certificate is to the effect that she is below 18 years and based upon the evidence of PW-7, who issued Ex.P5, the trial Court has laid the conviction under Section 4 of the POCSO Act.

7. Considering the oral and documentary evidence, particularly the evidence of PW-1, PW-5 and PW-7, this Court is not inclined to suspend the sentence imposed by the trial Court, for the present.

8. Accordingly, this petition seeking suspension of sentence, is dismissed for the present. However, the petitioner/accused is at liberty to move the Court at a later point of time.

-sd/-
03/09/2018

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 JUDICIAL MAGISTRATE,
ARIYALUR

2 THE PRINCIPAL SESSIONS COURT
ARIYALUR, ARIYALUR DISTRICT

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY

5 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ARIYALUR DISTRICT

C.C. to M/S.C.D.JOHNSON Advocate on payment of necessary
charges

Order

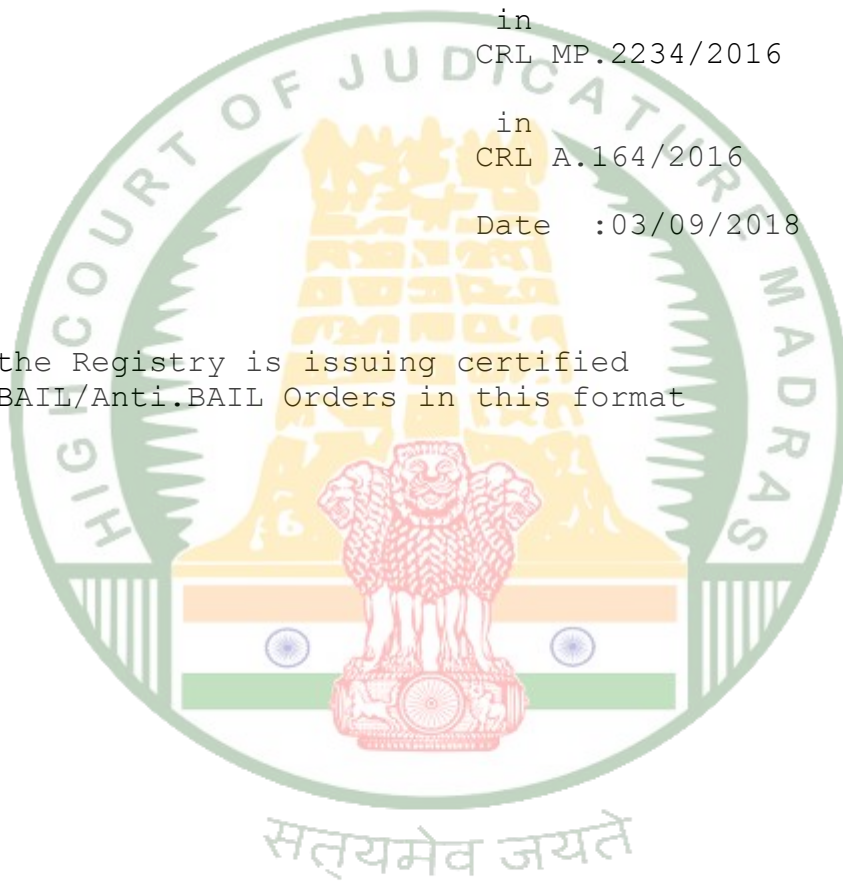
in
CRL MP.2234/2016

in
CRL A.164/2016

Date :03/09/2018

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cm 11/09/2018



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