

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eleventh day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.13567 of 2017

IN CRL A.689/2017

JAGADEESH @ JAGADEESWARAN

[PETITIONER / APPELLANT]

Vs

STATE REPRESENTED BY
INSPECTOR OF POLICE,
KANGEYAM POLICE STATION,
CR.NO.214/2013.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.689/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence passed against the petitioner/appellant in S.C.No.19 of 2015 dated 15.09.2017 on the file of the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and enlarge him on bail pending final disposal of the CRL.A.NO.689 OF 2017 [IN CRL.MP.NO.13567 OF 2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.689/2017 on the file of the High Court and upon hearing the arguments of M/S.S.KUMARA DEVAN, Advocate for the petitioner and of M/S.T.P.SAVITHA, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Miscellaneous Petition is filed by the petitioner/accused to suspend the sentence imposed against him in S.C.No.19 of 2015 on 15.09.2017 by the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and enlarge him on bail, pending disposal of Crl.A.No.689 of 2017.

2. The petitioner/accused has been convicted for the offence under Sections 7 r/w 8 of POCSO Act, 2012 and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further period of six months Rigorous Imprisonment. Under the said circumstances, the present petition has been filed seeking suspension of the sentence awarded.

3. The case of the prosecution is that on 01.06.2013, when the victim minor girl, aged about 10 years went to the house of the petitioner / accused to watch T.V., the petitioner locked his house and committed penetrative sexual assault on the minor child by forcibly shutting her mouth, which resulted in registration of a

case in Crime No.214 of 2013 against the petitioner/accused. The Trial Court, after considering the oral and documentary evidence, convicted the accused for the offence as stated supra.

4. Learned counsel for the petitioner / appellant would submit that though the evidence of P.W.2 / mother of the victim girl was given much importance by the Trial Court, it had failed to note that P.W.2 is not an eye witness to the occurrence, as she was not present at that time. One Tamil Selvi, who has been cited as P.W.3 is said to have seen the minor victim girl after the alleged occurrence, but strangely she was not examined by the prosecution before the Trial Court. He would further submit that the statement of the minor girl was not at all corroborated by any of the witnesses and there were several contradictions in the deposition of P.Ws.1 to 4, which were not properly considered by the Trial Court.

5. The learned Government Advocate opposed this petition stating that the commission of offence by the accused was duly proved beyond doubt by P.W.5 / Doctor, who had conducted medical examination on the victim / minor girl, with the material evidence, i.e., Medical Certificate / Ex.P5. 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 aged about 10 years 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 the past nine months; that 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 S.C.No.19 of 2015 dated 15.09.2017 by the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, is suspended till the disposal of Criminal Appeal No.689 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 Magalir Neethimandram (Fast Track Mahila Court), Tiruppur;

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/-
11/06/2018

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 MAGLIR NEETHIMANDRAM
[FAST TRACK MAHILA COURT] TIRUPPUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

4 THE INSPECTOR OF POLICE,
KANGEYAM POLICE STATION.

+1C.C. to M/S.S.KUMARA DEVAN Advocate on payment of necessary charges SR NO.10425

Order

in
CRL MP.13567/2017

in
CRL A.689/2017

Date :11/06/2018

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MK:14/06/2018