

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Third day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice C. T. SELVAM

CRIMINAL MISCELLANEOUS PETITION No.14461 of 2017

IN CRL A.779/2016

L.KUMAR,

[PETITIONER/APPELLANT]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE
KARIPATTI POLICE STATION,
SALEM. CR.NO.617 OF 2010.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.779 OF 2016 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the Learned Sessions Judge, Mahila Court, Salem in S.C.No.328 of 2014 in Crime No.617 of 2010, on the file of the Inspector of Police, Karippatti, Salem and to enlarge the petitioner on bail pending disposal of the above Appel No.779 of 2016.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.779 of 2016 on the file of the High Court and upon hearing the arguments of M/S.DR.S.R.KALYANI, Advocate for the petitioner and of MR. V.ARUL, ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

Petitioner, the sole accused, faced trial in SC.No.328/2014 on the file of learned Sessions Judge, Mahalir Court, Salem. Trial Court, under judgment dated 10.11.2016, convicted and sentenced the petitioner as follows:-

<i>Name of the Accused</i>	<i>Conviction under section</i>	<i>Sentence awarded</i>
Kumar - Sole Accused	376[1] IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of 6 months simple imprisonment.
	306 IPC	To undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of 6 months simple imprisonment.
	506[i] IPC	To undergo 2 years rigorous imprisonment and to pay a fine of Rs.2,000/- with a default sentence of 2 months simple imprisonment.

The Trial Court had ordered to run the sentences concurrently. Challenging the conviction and sentence, the petitioner has preferred the above appeal and this miscellaneous petition has been filed seeking suspension of sentence, pending appeal.

2 The case of the prosecution is that 3 months prior to 26.11.2010, the petitioner/accused, under the pretext of getting coolie work to the victim/deceased, committed the offence of rape on her and also threatened her with dire consequences. The victim, in fear of coming to the knowledge of her husband about the said incident, had committed suicide by self immolation on 26.11.2010. Hence, the complaint.

3 Learned counsel for petitioner would submit that there are several infirmities and inconsistencies in the prosecution case. Learned counsel further informs that the alleged occurrence of rape took place three months prior to the date of suicide and that the deceased did not disclose the occurrence to anyone. It is his further submission that the conviction of the Trial Court was based solely on Ex.P.10-Dying Declaration said to have been given by the deceased to P.W.9-Judicial Magistrate No.2, Salem and apart from the same, there is no other incriminating material to connect the accused with the crime. Learned counsel submits that the petitioner is in custody for more than one year.

4 Heard learned Additional Public Prosecutor on the submissions made by learned counsel for petitioner.

5 Taking into consideration the submissions of learned counsel for petitioner and that the criminal appeal is not likely to be taken up for final hearing in the near future and further considering the fact that the petitioner is in custody from 10.11.2016, this Court is of the view that petitioner herein may be granted the relief of suspension of sentence.

6 Accordingly, the substantive sentence of imprisonment alone is suspended and petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of learned Sessions Judge, Mahila Court, Salem and on further condition that petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
03/01/2018

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 SESSIONS JUDGE,
MAHILA COURT, SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
KARIPATTI POLICE STATION,
SALEM.

+1 C.C. to M/S.DR.S.R.KALYANI Advocate on payment of necessary charges-Sr.75

Order

in
CRL MP.14461/2017

in
CRL A.779/2016

Date :03/01/2018

From 7.2.2001 the Registry is issuing certified
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