

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.15315 of 2017

IN CRL A.237/2016

RAJA,

[PETITIONER]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
UDAIYARPALAYAM POLICE STATION,
ARIYALUR DISTRICT.
(CRIME NO.276 OF 2015).

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.237/2016 on the file of the High Court, the High Court will be pleased to suspend the sentence and grand bail to the petitioner/appellant for the conviction and sentence imposed in SPL.S.C.No.21 of 2015 dated 23.02.2016 on the file of the Sessions Judge, Fast Track Mahila Court, Ariyalur District.[CRL.MP.NO.15315/2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Apeel No.237/2016 on the file of the High Court and upon hearing the arguments of M/S.K.GANDHI KUMAR 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.21/2015 on the file of learned Sessions Judge, Fast Track Mahalir Court, Ariyalur District. Trial Court, under judgment dated 23.02.2016, convicted and sentenced the petitioner as follows:-

<i>Name of the Accused</i>	<i>Conviction under section</i>	<i>Sentence awarded</i>
Raja- Sole Accused	366 IPC	To undergo 5 years rigorous imprisonment and to pay a fine of Rs.1,000/- with a default sentence of 6 months simple imprisonment.
	506[i] IPC	To undergo 6 months rigorous imprisonment and to pay a fine of Rs.1,000/- with a default sentence of 2 months simple imprisonment.
	4 of POCSO Act	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- with a default sentence of 1 year simple imprisonment.
	6 of POCSO Act	To undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of 2 years 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 the petitioner/accused who is the uncle of the victim girl/P.W.1, aged about 15 years at the time of occurrence, took her in his two-wheeler to his village and stayed in a house for three days and had committed the offence of rape on her repeatedly. 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 complaint was registered based on the allegation that the victim girl was aged 15 years and was studying 10th standard at the time of the alleged occurrence ; whereas the evidence of P.W.15-Dr.Sudhakar, would disclose that the age of the victim ranges between 17 and 19 years and the said evidence on record make it likely that the victim was well past the age of 18 and admittedly, the victim has spent as many as three days with the accused on her own volition and that the victim is a consenting party and as such, the offence of rape has not been made out. It is his further submission that the petitioner/appellant is undergoing incarceration from 23.02.2016 and hence, he prays for suspension of sentence.

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 23.02.2016, 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, Fast Track Mahila Court, Ariyalur 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
FAST TRACK MAHILAR COURT,
ARIYALUR DISTRICT. TRIAL COURT,

2 THE CHIEF JUDICIAL MAGISTRATE
ARIYALUR[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
UDAIYARPALAYAM POLICE STATION,
ARIYALUR DISTRICT.

1 C.C. to M/S.K.GANDHI KUMAR Advocate on payment of necessary charges SR.NO. 93

Order

in
CRL MP.15315/2017

in
CRL A.237/2016

Date :03/01/2018

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