

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.2555 of 2017

IN CRL A.87/2017

HARIHARAN

[PETITIONER]

Vs

THE STATE REPRESENTED BY
INSPECTOR OF POLICE,
J-5, SASTHRI NAGAR POLICE STATION,
CHENNAI.
CR.NO.594 OF 2014.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No. on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by a Judgement dated 20-12-2016 made in Special S.C.No.202 of 2014 by the Special Court for Cases under POCSO Act 2012, Mahila Court, Chennai and release the petitioner on bail pending disposal of the Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No. on the file of the High Court and upon hearing the arguments of M/S.C.PRABAKARAN, Advocate for the petitioner and of PUBLIC PROSECUTOR 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 S.C.No.202 of 2014 on 20.12.2016 by the Special Court for cases under POCSO Act, 2012, Mahila Court, Chennai and enlarge him on bail, pending disposal of Crl.A.No.87 of 2017.

2. The petitioner/accused has been convicted for the offence under Section 6 of POCSO Act, 2012 and sentenced him to undergo imprisonment as follows:

Sl.No	Offences/Accused	Sentence, Imprisonment and Default Punishment
1.	Section 6 of POCSO Act, 2012	Ten years Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo six months Rigorous Imprisonment

3. Against the said conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.87 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 23.03.2014 at about 11:00am, when the victim minor girl, aged about 6 years was playing with her brother and other children, the accused drove the minor girl nearer to a water tap and misbehaved with her, thereby caused sexual harassment to the said victim child, besides giving life threat to her. Subsequently, on the basis of the complaint given by the mother of the child, a case in Crime No.594 of 2014 came to be registered against the accused initially for the offence under Sections 4 of POCSO Act, which was thereafter altered to Section 6 of POCSO Act and Section 506(ii) IPC and thereafter, and thereafter, a charge sheet was filed, which was taken on file in S.C.No.202 of 2014. The Trial Court, after considering the oral and documentary evidence, while acquitting the accused for the offence under Section 506(ii) IPC, convicted him under the POCSO Act as stated supra.

5. Learned counsel for the petitioner / appellant would submit that there are several contradictions in the evidence of prosecution witnesses, which were not corroborated with any other evidences. Further, there is an inordinate delay in preferring the complaint and no proper reason is forthcoming from P.W.1 for such delay. He would further submit that though P.Ws.2 and 3 categorically deposed that P.W.5 had seen the occurrence, the deposition of P.W.5 is quite contrary to their version. The alleged complaint was a motivated one pursuant to the previous enmity between D.W.1 and the complainant and in order to wreck vengeance, the complaint had been lodged with ulterior motive. Contending that the prosecution had failed to prove the case beyond reasonable doubt, 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 victim minor girl was sexually abused by the accused, who is her neighbour and she was threatened pursuant to her resistance and the guilt of the accused has been clearly established by the prosecution, through the cogent and convincing evidences of P.Ws.1 to 3. The evidence of the victim child was duly corroborated by the deposition of her brother, aged about 9 years and therefore, the prosecution had established its case without any jerk. 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 1½ year; that according to the learned counsel for the petitioner, since there was some lapse on the part of the prosecution in corroboration of evidences, 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 S.C.No.202 of 2014 on 20.12.2016 by the Special Court for cases under POCSO Act, 2012, Mahila Court, Chennai, is suspended till the disposal of Criminal Appeal No.87 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 IX Metropolitan Magistrate, Saidapet, Chennai;

d) and on further condition that he shall appear before the said Court weekly twice, viz., on the first and last working days of every week at 10.30 a.m until further orders.

-sd/-

23/07/2018

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 SPECIAL COURT FOR CASES UNDER POCSO ACT 2012,
MAHILA COURT, CHENNAI

2 THE METROPOLITAN MAGISTRATE,
NO.IX, SAIDAPET, CHENNAI

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

4 THE STATE REPRESENTED BY
INSPECTOR OF POLICE,
J-5, SASTHRI NAGAR POLICE STATION,
CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

+1 C.C. to M/S.C.PRABAKARAN Advocate on payment of necessary
charges SR.NO. 13674

Order

in
CRL MP.2555/2017

in
CRL A.87/2017

Date :23/07/2018

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RD 26/07/2018