

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Sixteenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.4732 of 2017

IN CRL A.190/2017

ANTHONY PRABHU @ PRABHU

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UTHAGAI, THE NILGIRIS.
CR.NO.05/2015.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.190/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner herein by the learned Sessions Judge, Magalir Neethimandram (Fast Track Court), Uthagamandalam, The Nilgiris made in Spl.C.C.No.07 of 2016 by Judgment dated 11.11.2016 and enlarge him on bail pending disposal of the above CRL A.190/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.190/2017 on the file of the High Court and upon hearing the arguments of M/S.T.SHANMUGAM, Advocate for the petitioner and of M/S.SAVITHA, GOVERNMENT ADVOCATE [CRL.SIDE] 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 Spl.C.C.No.7 of 2016 on 11.11.2016 by the learned Sessions Judge, Magalir Neethimandram (Fast Tract Court), Uthagamandalam, The Nilgiris and enlarge him on bail, pending disposal of Crl.A.No.190 of 2017.

2. The petitioner/accused has been convicted for the offences under Section 5(1) r/w 6 of POCSO Act, 2012 and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year simple imprisonment, with further direction to pay compensation from the Victims Assistance Fund as per the Government Gazette dated 14.12.2012 by the District Collector, The Nilgiris to the District Legal Aid Services Committee, The Nilgiris within 30 days to be payable to the victim girl.

3. Against the said conviction and sentence, the petitioner has preferred an appeal in CrI.A.No.190 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 two occasions, viz., on 14.02.2015 and 13.11.2015 respectively, the petitioner/accused, knowing full well that the victim girl, aged about 14 years, is a minor and on the false promise of marrying her under the guise of loving her, had sexual intercourse with her, thereby committed the offence punishable under the provisions of POCSO Act. Subsequently, on the basis of the complaint given by the mother of the victim girl, a case in Crime No.5 of 2015 came to be registered against the accused and thereafter, a charge sheet was filed, which was taken on file in Spl.C.C.No.7 of 2016. The Trial Court, after considering the oral and documentary evidence, convicted the accused for the offences as stated supra.

5. Learned counsel for the petitioner / appellant would submit that prior to the alleged occurrence, the father of the victim girl had misbehaved with the wife of the accused and the mother of the victim had lodged the complaint in order to save her husband from the criminal liability, before the complaint being preferred by the wife of the accused. He would further submit that the Trial Court had not considered the deposition of P.W.8 / Dr.Divya, who conducted medical examination on the victim girl in a proper perspective, as P.W.8 had deposed that there was neither proof of intercourse in the recent past nor injury found on her chest or in her vital organ and she had also issued a wound certificate to that effect. Contending that the prosecution had failed to establish its case, beyond all 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 (CrI.Side) has contended that the guilt of the accused has been clearly established by the prosecution, through various incriminating materials. Though the accused had committed the offence of sexual assault on the accused on several times, on the fateful day, he had sexual intercourse with her on two times, pursuant to which, the victim girl got fainted. Learned Government Advocate (CrI.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 more than 1½ year; that according to the learned counsel for the petitioner, since there was no corroboration of the medical evidence, 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 Spl.C.C.No.7 of 2016 on 11.11.2016 by the learned Sessions Judge, Magalir Neethimandram (Fast Tract Court), Uthagamandalam, The Nilgiris, is suspended till the disposal of Criminal Appeal No.190 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 Judicial Magistrate, Uthagamandalam, The Nilgiris;

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/-
16/07/2018

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 SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM
(FAST TRACK COURT),
UTHAGAMANDALAM.

2 THE JUDICIAL MAGISTRATE,
UTHAGAMANDALAM.

2 THE CHIEF JUDICIAL MAGISTRATE
NILGIRIS. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UTHAGAI, THE NILGIRIS.

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S.T.SHANMUGAM Advocate on payment of necessary
charges

Order

in
CRL MP.4732/2017

in
CRL A.190/2017

Date :16/07/2018

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MLT-20/07/2018