

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourteenth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.2566 of 2018

IN CRL A.692/2017

MADAN

[PETITIONER]

Vs

STATE REP. BY,
DEPUTY SUPERINTENDENT OF POLICE,
POLLACHI DIVISION,
COIMBATORE DISTRICT.
CR.NO.12 OF 2014

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.692/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in Special C.C.No.56 of 2014 on the file of E.C.Act Special Court, Coimbatore, Sessions Judge, Magalir Neethimandram by a judgment dated 03/10/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.692/2017 on the file of the High Court and upon hearing the arguments of MR.S.SHANKAR, Advocate for the petitioner and of M/S.T.P.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.56 of 2014 on 03.10.2017 by the learned Sessions Judge, Magalir Neethimandram (E.C. Act Special Court), Coimbatore and enlarge him on bail, pending disposal of Crl.A.No.692 of 2017.

2. The petitioner/accused has been convicted for the offence under Sections 3(A) r/w 4 of POCSO Act and sentenced to undergo Seven years Rigorous Imprisonment with a fine of Rs.10,000/- in default to undergo three months Rigorous Imprisonment. Against the conviction and sentence, the petitioner has preferred an appeal Crl.A.No.692 of 2017, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

3. The case of the prosecution is that on 15.05.2014 at about 9.00pm, when the mother of the victim minor girl had gone out for shopping, the petitioner, who is married man having a child and whose house is situated near to the house of the victim girl (aged about 13 years), took advantage of her loneliness, brought her to a deserted hut, closed her mouth and thereafter, forcibly had sexual intercourse with her. Further, it is alleged that he had threatened to kill her, if she would disclose the incident to anybody. When the aunt of the victim girl, on noticing the different behaviour of the victim girl, enquired her, she has narrated the whole incident to her and thereafter, a complaint was lodged against the accused by the mother of the victim girl, which resulted in registration of a case in Crime No.12 of 2014 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 there was an unexplained delay of six days in lodging the complaint, that is the occurrence is said to have taken place on 15.05.2014, but the complaint was lodged only on 21.05.2014. The Trial Court did not examine the aunt of the victim girl, who is a main witness in this case, as the victim girl had disclosed the entire incident to her only and such non examination creates doubts in the prosecution case. He would further submit that there is no deposition by the Doctor with regard to sustenance of injuries on the mouth or private part of the victim girl and the Trial Court, solely relying upon the evidence of the victim girl / PW1, has convicted the petitioner / accused. Moreover, except interested witnesses, namely, the victim girl and her mother, no other independent witnesses were examined by the Trial Court to prove the guilt of the accused, though there were several houses situated near to her house. Contending that there are a lot of contradictions in the case, it is prayed that the petitioner is entitled to the grant of suspension of sentence.

5. Per contra, the learned Government Advocate (Crl.Side) opposed this petition stating that the prosecution case has been duly proved supported by prosecution witnesses and medical evidence and 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 relief of suspension of sentence. It was also apprehended by the prosecution that in the event of suspending the sentence and enlarging him on bail, there is every possibility of the accused fleeing away from justice and therefore, the petition is liable to be dismissed. Apart from this, the learned Government Advocate (Crl.Side) also raised a ground that the conviction was passed only on 03.10.2017 and it is too short to consider the suspension of sentence.

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 eight months; that according to the learned counsel for the petitioner, 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 Spl.C.C.No.56 of 2014 on 03.10.2017 by the learned Sessions Judge, Magalir Neethimandram (E.C. Act Special Court), Coimbatore, is suspended till the disposal of Criminal Appeal No.692 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 E.C. Act Special Court, Coimbatore, Sessions Judge, Magalir Neethimandram, Coimbatore;

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/-
14/06/2018

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 SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM,
E.C. ACT SPECIAL COURT,
COIMBATORE.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
POLLACHI DIVISION,
COIMBATORE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1C.C. to M/S.S.SHANKAR Advocate on payment of necessary
charges in SR.NO. 10895

Order

in
CRL MP.2566/2018

in
CRL A.692/2017

Date :14/06/2018

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MLT-20/06/2018