

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Second day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.333 of 2018

IN CRL A.26/2018

KUMAR,

[PETITIONER/APPELLANT/ACCUSED]

vs

STATE BY,
INSPECTOR OF POLICE,
VELUR ALL WOMEN POLICE STATION,
NAMAKKAL DISTRICT.
CR.NO.7 OF 2015

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.26 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in Spl.C.C.No.42 of 2015 on the file of The Sessions (FAST TRACK MAHILA) Judge, NAMAKKAL by judgment dated 20.12.2017 and enlarge the petitioner on bail, pending disposal of the appeal before this Honourable Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.26 of 2018 on the file of the High Court and upon hearing the arguments of M/S.B.VASUDEVAN, Advocate for the petitioner and of Mr.R.SURYA PRAKASH, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

The petitioner was convicted by the learned Sessions (Fast Track Mahila) Judge, Namakkal, in S.C.No.42 of 2015 by judgment dated 20.12.2017 for the offences under Section 448 of IPC and Section 3 r/w. 4 of POCSO Act, 2012, and sentenced to undergo rigorous imprisonment for one year for the offences under Section 448 of IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- and in default, to undergo rigorous imprisonment for six months for the offence under Section 3 r/w. 4 of POCSO Act, 2012.

2. The case of the prosecution is that the complainant/victim namely Arthi aged about 12 years was studying 7th standard at the time of occurrence. The accused is neighbour of the complainant/victim. On the date of occurrence i.e., on 31.07.2015, the victim was sleeping in their hut and her parents were sleeping in the next room. At that time at about 12.00 a.m. (mid night), the

accused entered into the house of the victim with an intention of committing rape on victim, who is sleeping in a separate cot and the accused removed the dress of the victim and penetrated his penis upon her vagina. In the meanwhile, the victim cried soundly and hence, the accused immediately escaped from the scene. The victim suffered a pain on her thigh and private parts. Hence, the complaint.

3. Learned counsel appearing for the petitioner would submit that existence of previous enmity between the family members has not been properly appreciated by the learned Sessions (Fast Track Mahila) Judge and the learned Sessions Judge has committed an error in taking the statements of witnesses recorded under Section 164 of Cr.P.C. as a substantial piece of evidence and hence, prayed for suspension of sentence.

4. Learned Government Advocate, based upon the counter filed by the Inspector of Police, Velur All Women Police Station, Namakkal District, would submit that all the prosecution witnesses have supported the case of the prosecution and the age of the girl has been properly proved before the trial Court and the victim, who was examined as P.W.2, has clearly narrated the act of the accused on the body of the victim girl and prayed for dismissal of the petition.

5. Heard both sides and perused the materials available on record.

6. P.W.2 is a minor girl aged about 12 years studying 7th standard and she has narrated the incident and the act of the accused on her body and it was duly recorded by P.W.14/Judicial Magistrate under Section 164 of Cr.P.C. and during the time of the trial, the evidence of the victim girl/P.W.2 was duly corroborated by the evidence of P.Ws.1 and 3.

7. Considering the facts and circumstances of the case and also coupled with the clear and cogent evidence of P.W.14, I am not inclined to grant suspension of sentence to the petitioner pending appeal.

8. In this view of the matter, this miscellaneous petition, seeking suspension of sentence, is dismissed. However, liberty is given to the petitioner/accused to move the Court at a later point of time.

-sd/-

02/08/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)

<https://hcservices.ecourts.gov.in/hcservices/>

High Court, Madras - 600 104.

TO

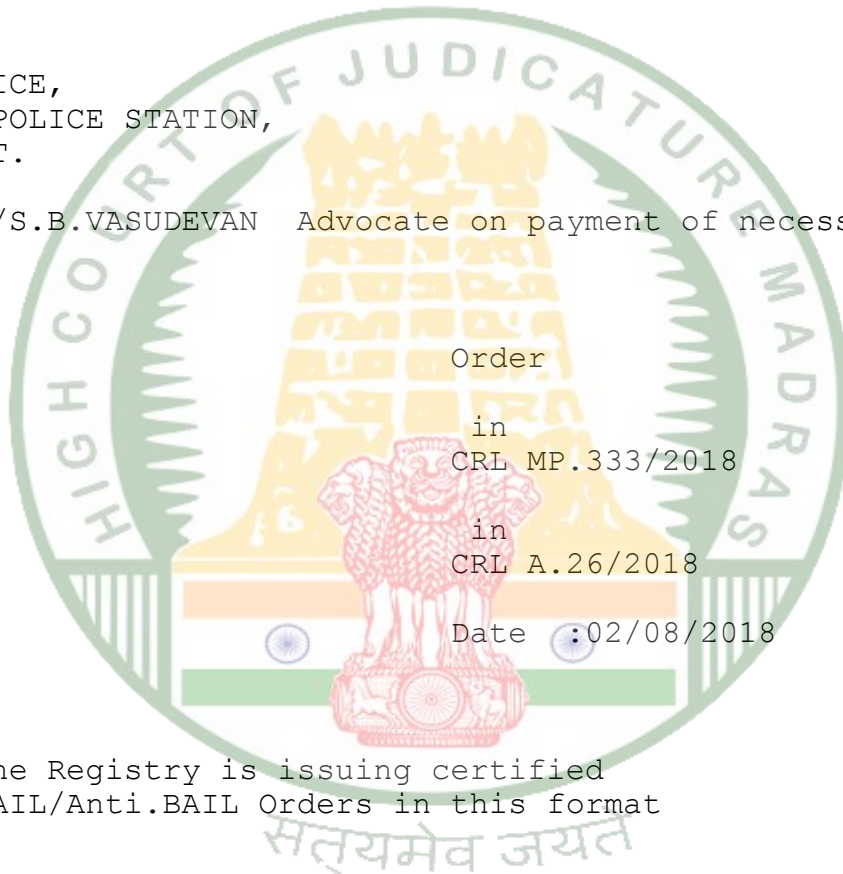
1 THE SESSIONS (FAST TRACK
MAHILA) JUDGE, NAMAKKAL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE BY,
INSPECTOR OF POLICE,
VELUR ALL WOMEN POLICE STATION,
NAMAKKAL DISTRICT.

+1 C.C. to M/S.B.VASUDEVAN Advocate on payment of necessary
charges-Sr.14379



From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
ths : 03.08.2018

WEB COPY