

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eighteenth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.3568 of 2018

IN CRL A.145/2018

G.THIRUMAVALAVAN

[PETITIONER / APPELLANT / ACCUSED]

Vs

THE STATE REP. BY ITS,
THE INSPECTOR OF POLICE,
KUNNAM POLICE STATION,
PERAMBALUR DISTRICT.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.145/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.14/2011 dated 06.01.2018 passed by this Hon'ble Mahila Judge and enlarge the petitioner on bail pending disposal of main Criminal Appeal No.145 of 2018. [IN CRL.MP.NO.3568 OF 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.145/2018 on the file of the High Court and upon hearing the arguments of M/S.T.SEENIVASAN, Advocate for the petitioner and of M/S.T.P.SAVITHA, Govt. 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 S.C.No.14 of 2011 on 06.01.2018 by the learned Mahila Judge, Perambalur and enlarge him on bail, pending disposal of Crl.A.No.145 of 2018.

2. The petitioner/accused has been convicted for the offence under Section 376 IPC and sentenced to undergo ten years Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo three years Simple Imprisonment. Against the conviction and sentence, the petitioner has preferred an appeal Crl.A.No.145 of 2018, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

3. The case of the prosecution is that the petitioner / accused and the victim lady / P.W.3 were known to each other and on 20.06.1998 at about 8.00pm, the petitioner forcibly took her to a garden valley and had sexual intercourse with her against her Will

on the false promise of marrying her. It is further alleged that when the victim insisted for marriage, he subsequently refused to marry her and also stopped from communicating her. Thereafter, a complaint was lodged against the accused by the victim herself, which resulted in registration of a case in Crime No.275 of 1998 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 the medical evidence did not corroborate with the case of the prosecution, as the Doctor / P.W.9, who conducted medical examination on the victim girl, had deposed that there was no local injury found over the body of the prosecutrix and there was no presence of semen on the private body of the victim girl and as such, in absence of any traces of forcible intercourse, the conviction and sentence imposed on the accused is not sustainable. He would further submit that there is a contradiction in the deposition of the victim, viz., on one hand, initially, it was deposed by her that while she was returning from her work, she was forcibly taken to a lonely place and raped and on the other hand, subsequently, it was deposed that after finishing her bath and returning to her home, the petitioner/accused had committed the alleged offence. Contending that material objects, such as torn clothes were neither sent for chemical analysis nor produced before the Trial Court for the purpose of examination, 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 by one independent witness (P.W.13), who saw the victim girl at the place, where the incident had taken place and informed the same to Panchayathars too. The delay in registration of the FIR was on account of the efforts taken for compromise between the petitioner and the victim lady. 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 submitted by the learned Government Advocate (Crl.Side) that the accused, after the incident, had absconded from the place and he was arrested subsequent to the issuance of arrest warrant and therefore, the petition is liable to be dismissed.

6. In the light of the submissions made on either side herein-above, according to the learned counsel for the petitioner, he has got some points for argument 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 S.C.No.14 of 2011 on 06.01.2018 by the learned Sessions Judge, Mahila Court, Perambalur, is suspended till the disposal of Criminal Appeal No.145 of 2018;

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, Perambalur;

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/-
18/06/2018

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,
MAHILA COURT, PERAMBALUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4 THE INSPECTOR OF POLICE,
KUNNAM POLICE STATION,
PERAMBALUR DISTRICT.

+1C.C. to M/S.T.SEENIVASAN Advocate on payment of necessary charges SR NO.11047

Order

in
CRL MP.3568/2018

in
CRL A.145/2018

Date :18/06/2018

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MK:22/06/2018