

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Sixth day of October Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.9475 of 2018

CRL.A.No.411 OF 2018

PACKIRISAMY @ RAJA

[PETITIONER]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
T.R.PATTINAM POLICE STATION
KARAIKAL, UNION TERRITORY OF
PUDUCHERRY CR.NO.26 OF 2013.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.411 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the Petitioner Appellant by the Learned Sessions Judge, Karaikal in Special Sessions Case No.07/2016 dated 29.11.2017 and enlarge him on Bail pending disposal of the above Criminal Appeal No.411 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.411 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.V.SATHISH, Advocate for the petitioner and of MR.D.BHARATHA CHAKRAVARTHY, PUBLIC PROSECUTOR FOR PUDUCHERRY on behalf of the Respondent the court made the following order:-

The convicted Accused has preferred this application in Crl.A.No.411 of 2018 pending this appeal, and he seeks suspension of sentence against the Judgment dated 29.11.2017 in Special Sessions Case No.07 of 2016 before the learned Sessions Judge, Karaikal, who had convicted the accused / petitioner herein for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment for a period of 10 years with fine amount of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months.

2. The case of the prosecution is that on 25.02.2013 between 22.30 hours and 3.30 hours at Pattinacherry Road near Railway gate Karaikal, by Shri T.R.Pattinam, the petitioner / Appellant along with

the one Juvenile, by name, Kumaravel in furtherance of common intention, committed gang penetrative sexual assault which falls under Sections 5(g) and 5 (f) of the Protection of Children from Sexual Offences Act, 2012 and had sexual intercourse with the victim girl, Malathi against her by penetrating his penis into the vagina of the female child and thereby, committed aggravated penetrative sexual assault.

3. The learned counsel for the petitioner / Appellant would contend that regarding the age of the victim, there is no positive witness placed before this Court, in order to maintain the prosecution under the POCSO Act, and there is a considerable delay in filing the FIR and the medical examination was not conducted on the body of the victim girl, and hence he seeks bail pending appeal.

4. The learned counsel for the petitioner / Appellant would also draw my attention that findings of the learned Sessions Judge, Karaikal, has failed to consider Ex.P2, Transfer Certificate of PW1/victim.

5. Per contra, the learned Public Prosecutor, (Pondicherry) would contend that as per the witness PW8, Dr.Nisha, who has taken the X-ray, and gave an opinion about the age of the victim as 12 years at the time of occurrence.

6. Furthermore, the learned Public Prosecutor, Pondicherry stated that the reason for rejecting Ex.P2, Transfer Certificate of PW1 is that none of the name of the parents of the victim girl was entered therein. Both the parents are dead and thereafter, victim girl was being brought up by the grand mother. Further, he has also stated that PW8, Doctor was pointed out the age and furthermore, the delay in filing FIR has been properly explained and the same is found to have been accepted by the Trial Court.

7. Heard both arguments made by the respective counsel and gone through the evidence of the prosecution witnesses Pws.1 to PW10 and Exs.P1 to P11 and M.O.1 to M.O.5.

8. It is represented by the learned Public Prosecutor, (Pondicherry) that the charge sheet has been laid against the accused and another accused A2, who is Juvenile in this case. Hence, the case against the A2 had been split up and tried before the Juvenile Justice Board, which is found to be conflict in law and accordingly admonished him.

9. Taking into consideration, the medical witness PW8, Doctor, recording the age of the victim girl and also taking note of the

evidence of PW1 and PW2 and Ex.P11, Section 164 Cr.P.C statement of victim recorded before the Judicial Magistrate. I am of the considered view that the petitioner herein is not entitled to bail and hence I am not inclined to grant bail to the petitioner. Hence, the Criminal Miscellaneous Petition filed by the petitioner / Appellant is dismissed.

-sd/-
26/10/2018

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,
KARAIKAL,

2 THE PUBLIC PROSECUTOR,
PUDUCHERRY.

3 THE INSPECTOR OF POLICE,
T.R.PATTINAM POLICE STATION,
KARAIKAL UNION TERRITORY OF
PUDUCHERRY.

4 THE OFFICER INCHARGE,
KARAIKAL.

C.C. to M/S.V.SATHISH Advocate on payment of necessary charges

Order

in

CRL MP.9475/2018

in

CRL.A.NO.411/2018

Date :26/10/2018

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