

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirtieth day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.4624 of 2018

IN CRL A.190/2018

PALANISAMY

[PETITIONER]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
PULAMPATTI POLICE STATION,
EDAPADI TALUK,
SALEM DISTRICT
CR.NO.242 OF 2012.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.190/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Learned District Mahila Sessions Court, at salem Special Sessions Case No.326 of 2014 dated 22.02.2018 and grant bail to the petitioner pending disposla of the appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.190/2018 on the file of the High Court and upon hearing the arguments of M/S.N.MANOKARAN Advocate for the petitioner and of MR.R.SURYA PRAKASH Government Advocate on behalf of the Respondent the court made the following order:-

This petition is filed praying to suspend the sentence imposed by the learned District Mahila Sessions Court at Salem, in Spl.S.C.No.326 of 2014, dated 22.02.2018 and grant bail to the petitioner pending disposal of the appeal.

2. The facts of the case is that PW-1(Madhubala), who is the victim alleged to have gone to attend natural call on 20.12.2012 at about 10.00 p.m., and at that time, the accused alleged to have put his hands on her back and when she questioned the same, the accused threatened the victim and forcibly committed rape on her and hence, First Information Report was registered. After investigation, charge sheet was filed under Sections 376(1) and 506(ii) of IPC. After considering the oral and documentary evidence, the petitioner/accused

was convicted by the learned District Mahila Session Judge, Salem for the offence punishable under Sections 376(1) of the Indian Penal Code and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment for the offence under Section 376(1)IPC. Aggrieved against the judgment of conviction and sentence passed by the trial Court, the petitioner has filed the criminal appeal. Pending appeal, this petitioner has filed the present petition seeking suspension of sentence.

3.The learned counsel appearing for the petitioner has contended that even in Ex.P1-complaint and the statements of the witnesses viz., PW1 and PW2 recorded under Section 161 Cr.P.C., they have categorically stated that even before the alleged occurrence of sexual assault on the victim, PW-1-victim had illicit relationship with the petitioner and she had known to him for the past one year before the occurrence. However, PW2 has advised and controlled PW1 not to interact with the accused any further. Further, It is contended that admittedly as per the cross examination of PW-1 (victim) and PW-2 (husband of the victim), they have admitted in their version that due to previous enmity with regard to payment of chit amount and at the instance of one Senthil Rajan, a false case has been foisted against the appellant/petitioner herein as if he had committed the offence under Section 376 IPC. My attention was also drawn to the fact that the earlier complaint given to the police has been burked by the prosecution and earlier Accident Register issued at the Government Hospital, Edapadi was not produced. However, the copy of the Accident Register issued by the Government Hospital at Salem was produced and hence, he sought for suspension of sentence.

4. The learned Government Advocate appearing for State would submit that the evidence of prosecutrix (PW-1) inspires the confidence of the Court and since the particular incident, according to PW-1, had happened against her will and wish, it amounts to rape as defined under Section 376 IPC and hence, he strongly opposed for suspension of sentence.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the State and also perused the materials available on record.

6. After hearing both the parties and also taking note of the inconsistency in Ex.P1-complaint and the statements of witnesses PW-1 and PW-2 elucidated by the Investigating Officer regarding previous enmity with the accused and also other material contradictions on the materials particulars touching upon the charge under Section 376 IPC, I am inclined to suspend the sentence imposed by the trial Court.

7. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Salem and on further condition that, the petitioner shall appear before the said Court on

the first working day of every month at 10.30 a.m until further orders.

-sd/-

30/08/2018

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

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE
MAHILA COURT, SALEM

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
PULAMPATTI POLICE STATION,
EDAPADI TALUK, SALEM DISTRICT

5 THE DISTRICT MAHILA SESSIONS
COURT AT SALEM

6 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

C.C. to M/S.N.MANOKARAN Advocate on payment of necessary charges

Order

in
CRL MP.4624/2018

in
CRL A.190/2018

Date :30/08/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 30/08/2018