

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Seventh day of November Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.15293 of 2018

IN CRL A.489/2018

VIJAYAKANTH,

[APPELLANT/ACCUSED]

Vs

STATE BY,

[RESPONDENT]

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
BARGUR, KRISHNAGIRI DIST.
CR.NO.4 OF 2016

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.489 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Learned Sessions Judge, Fast Track Mahalir Court, Krishnagiri in Special S.C.No.38 of 2016 dated 25.07.2018 and enlarge the petitioner on bail pending disposal of Crl.Appeal No.489 of 2018 on the file of this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.489 of 2018 on the file of the High Court and upon hearing the arguments of M/S.T.VENKATESAN, Advocate for the petitioner and of MR. Mrs.V.SARATHA DEVI, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

The petitioner/appellant is the sole accused in Spl.S.C.No.38 of 2016, on the file of the Sessions Judge, Fast Magalir Needhimandram, Krishnagiri. By judgment dated 25.7.2018, the trial Court has convicted the appellant for offence under Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for brevity). He was sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, sentenced to undergo Rigorous Imprisonment for six months. Hence, the petitioner seeks suspension of sentence.

2.The learned counsel for the petitioner/appellant pointed out that there are certain holes in the prosecution case while convicting the accused under the provisions of the POCSO Act and the petitioner/appellant was sentenced to undergo Rigorous Imprisonment for seven years. He would further submit that the age of the victim is doubtful, since she herself declared her age as 19. But the

prosecution relied upon the Certificate issued by the Headmaster of the School, at the time when the victim was admitted in the Higher Secondary School. Such certificate cannot be relied upon in view of the admission of the victim girl that her age was 19. This statement of the victim was also corroborated by the Investigating Officer during his investigation.

3.The learned counsel for the petitioner would also point out certain infirmities and lacuna in the case of the prosecution, since both the petitioner and the victim girl were in relationship, as they belong to the same neighbourhood. The petitioner is also undergoing sentence for nearly four months. According to the learned counsel, the petitioner has got bright chances of success in the appeal.

4.In view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for the petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

5.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute 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, Fast Track Mahalir Court, Krishnagiri, and on further condition that the petitioner shall report before the trial Court once in a week, i.e. every Monday at 10.30 a.m., until further orders.

-sd/-

27/11/2018

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

सत्यमेव जयते
TRUE COPY

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

WEB COPY

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHALIR COURT, KRISHNAGIRI.

2 THE SUPERINTENDENT,
CENTRAL JAIL, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
BARGUR, KRISHNAGIRI DIST.

+2 C.C. to M/S. T.VENKATESAN, Advocate on payment of necessary
charges-Sr.22414

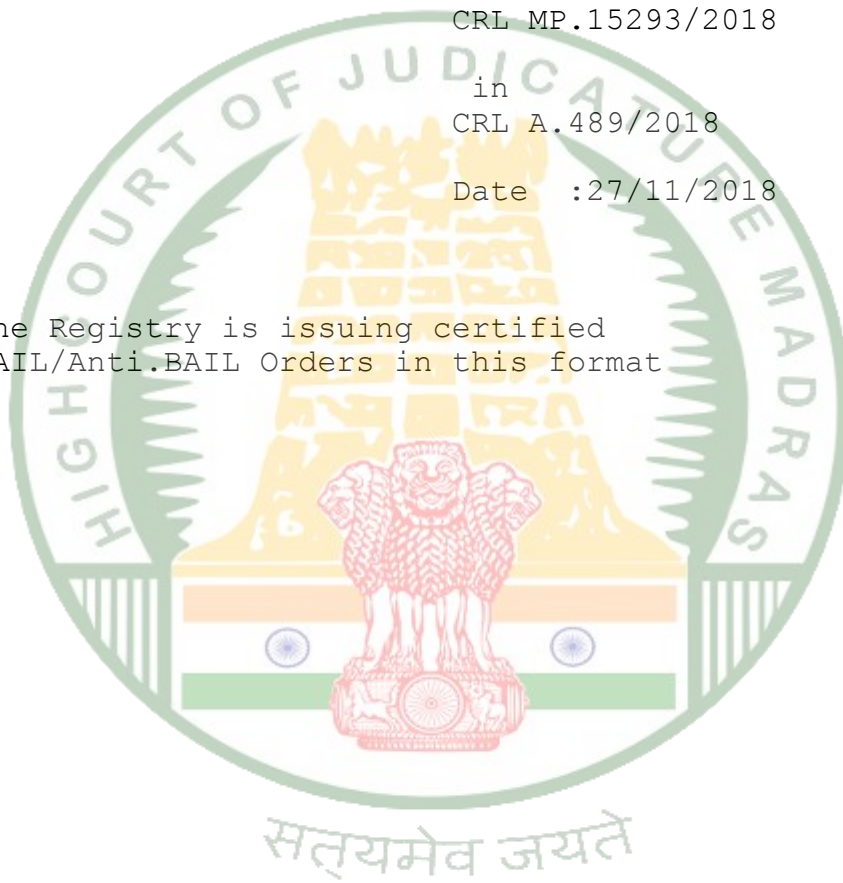
Order

in
CRL MP.15293/2018

in
CRL A.489/2018

Date :27/11/2018

From 7.2.2001 the Registry is issuing certified
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THS : 27.11.2018



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