

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Tenth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.16756 of 2018

IN CRL A.442/2018

SURESH

[PETITIONER / APPELLANT]

Vs

STATE REP. BY

[RESPONDENT]

INSPECTOR OF POLICE,
W-15, ALL WOMEN POLICE STATION,
ROYAPURAM, CHENNAI-600 013.
CR.NO.663 OF 2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.442/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in S.C.No.310 of 2017 on the file of the Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai, dated 13.07.2018 and enlarge the petitioner on bail pending disposal of the above CRL A.442/2018 [IN CRL.MP.NO.16756 OF 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.442/2018 on the file of the High Court and upon hearing the arguments of M/S.K.SELVAKUMARASWAMI, Advocate for the petitioner and of MRS.V.SARATHADEVI Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The petitioner/appellant is the sole accused in S.C.No.310 of 2017, on the file of the Sessions Judge, Mahila Court, Mahalir Needhimandram, Chennai. By judgment dated 13.7.2018, the trial Court has convicted the appellant for offence under Sections 366 of the Indian Penal Code and 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.10,000/-, in default, sentenced to undergo Rigorous Imprisonment for six months for offence under Section 366 IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for six months for offence under Section 4 of POCSO Act, 2012. Hence, the petitioner seeks suspension of sentence.

2.The learned counsel for the petitioner/appellant submitted that it is a case of consent and there was a love affair between the victim girl and the petitioner. On 4.7.2016, the victim girl went with the petitioner on her own accord and she stayed with the petitioner for four days in Thiruvannamiyur and thereafter both of them went to Andhra Pradesh. There are certain infirmities in the prosecution case as there was contradiction as to the place of occurrence and the place of arrest and the same has not been proved by the prosecution beyond reasonable doubt. The father of the victim girl, who was examined as P.W.1, has stated that the accused was arrested at Andhra Pradesh and he has not raised any suspicion against the petitioner. However, the Investigating Officer has stated that the accused was arrested in Thiruvannamiyur.

3.The learned Government Advocate would state that the consent of the victim girl is immaterial for the charge under the POCSO Act, and in this case, the victim girl is hardly 15 years old. The petitioner, under the guise of marrying the victim girl, committed sexual assault. The evidence of Doctor, who examined the victim girl, also corroborates the statement given by the victim girl. The age of the victim girl is not in dispute. The ingredients of Section 4 of the POCSO Act clearly attracts in this case and the petitioner cannot be shown any indulgence. Accordingly, she prays for dismissal of the petition.

Considering the submissions made by the learned Government Advocate and the nature of offence committed by the accused, this Court is not inclined to suspend the sentence. Accordingly, this petition is dismissed for the present.

-sd/-
10/12/2018

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 SPECIAL COURT FOR
CASED UNDER POSCO ACT 2012/
MAHILA COURT, CHENNAI-600 104.

2 THE SESSIONS JUDGE,
MAHILA COURT,
MAHILIR NEEDHIMANDRAM, CHENNAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
W-15, ALL WOMEN POLICE STATION,
ROYAPURAM, CHENNAI-600 013.

C.C. to M/S.K.SELVAKUMARASWAMI Advocate on payment of
necessary charges

Order

in
CRL MP.16756/2018

in
CRL A.442/2018

Date :10/12/2018

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MK:14/12/2018

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