



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Fourteenth day of February Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL MP(MD) No.19 of 2018

IN

CRL A(MD) No.96 of 2016

BALUSAMY

... PETITIONER/APPELLANT

Vs

STATE REP.BY,
THE INSPECTOR OF POLICE,
PASUPATHIPALAYAM POLICE STATION,
KARUR,
(CRIME NO. 591 /2014)

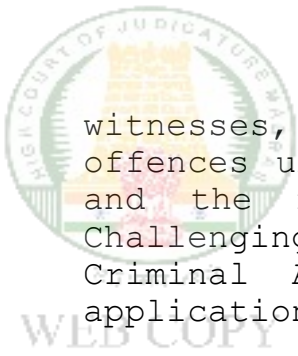
... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the Sentence of Imprisonment imposed by the learned Sessions Judge - Mahalir Fast Track Court, Karur in Spl. S.C.No.10 of 2015 by the Judgment dated 04.12.2015 and enlarge the Petitioner / Appellant on bail, pending disposal of the abovesaid Criminal Appeal

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.DEENADHAYALAN, Advocate for the petitioner and of M/S.S.BHARATHI, Government Advocate (Crl.Side) on behalf of the Respondents the court made the following order:-

This is the third bail application.

2. It is the case of the prosecution that the petitioner herein had made two children to perform oral sex on 18.09.2014 at the residence of Kathayee. On 18.09.2014 in the evening, when the children were being fed by their mother, they complained of pain in the mouth and, therefore, when the mother asked them, they stated that the petitioner had kept his private part into their mouths and, therefore, they were not able to have their food. On the next day, i.e., on 19.09.2014, a complaint was lodged to the police, based on which, a case was registered and after investigation, a charge sheet was filed before the Mahila Court, Karur in Spl.S.C.No.10 of 2015. The Trial Court, after recording the evidence of prosecution



witnesses, has convicted and sentenced the petitioner for the offences under the Protection of Children from Sexual Offences Act and the maximum sentence is 10 years rigorous imprisonment. Challenging the conviction and sentence, the petitioner has filed Criminal Appeal (MD)No.96 of 2016 and has filed the present application for suspension of sentence and bail.

3. Heard Mr.S.Deenadhayalan, learned counsel for the petitioner and Mrs.S.Bharathi, learned Government Advocate (Criminal side) for the respondent.

4. Mr.S.Deenadhayalan, learned counsel for the petitioner submitted that the evidence of P.W.4 and P.W.5 shows that the house of Kathayee was always locked and, therefore, there is no possibility for the petitioner to have taken the children to her house. The learned counsel also submitted that the defence had examined the Headmistress and Class teacher as D.W.1 and D.W.2 and have marked the attendance register for 18.09.2014, which shows that the children attended the School. The learned counsel further submitted that the mother of the children did not inform this to anybody, but, had gone straight to the police station and lodged the complaint.

5. Per contra, the learned Government Advocate (Criminal side) submitted that the evidence of the boy (P.W.15) clearly implicates the petitioner. As regards the first submission, the evidence of P.W.15, the victim boy clearly states that in the afternoon of 18.09.2014 around 01.15 p.m., the accused, who was very friendly with the children, took them to Kathayee's house and inserted his private part into their mouths. The defence have not been able to substantially demolish the evidence of the child witness-P.W.15 in the cross-examination. Thus, when there are sufficient materials on record to show the involvement of the petitioner in child abuse, this Court is of the view that the other points raised by Mr.S.Deenadhayalan, learned counsel for the petitioner should be left for the appellate Court to decide on merits at the time of disposal of the appeal.

6. In fine, this petition lacks merit and this is not a fit case in which the suspension of sentence and bail can be granted to the petitioner. Hence, this petition is devoid of merits and accordingly, it is dismissed.

sd/-
14/02/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



1 THE SESSIONS JUDGE,
MAHILA FAST TRACK COURT, KARUR

2 THE INSPECTOR OF POLICE
PASUPATHIPALAYAM POLICE STATION, KARUR,

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

4 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.19 of 2018
IN
CRL A (MD) No.96 of 2016
Date :14/02/2018

PK/RR-CSL/SAR-4/19.02.2018 : 3P/5C