



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

Friday, the Sixteenth day of February Two Thousand Eighteen

WEB COPY

PRESENT

**The Hon`ble Mr Justice P.N.PRAKASH**

**CRL MP(MD) No.422 of 2018**

**IN**

**CRL A(MD) No.37 of 2018**

1 LEKKAN @ BALAKRISHNAN

2 ADAIKALAM @ KATHALAI

... PETITIONERS/APPELLANTS

Vs

STATE REP.BY,  
THE INSPECTOR OF POLICE,  
ARUPPUKOTTAI TOWN POLICE STATION,  
VIRUDHUNAGAR DISTRICT.  
(CRIME NO.1156/2009)

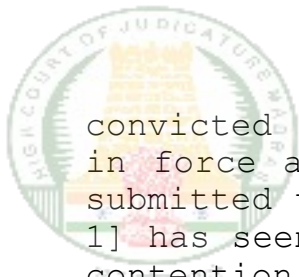
... RESPONDENT/COMPLAINANT

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, Fast Track Mahilir Neethimandram, Virudhunagar District at Srivilliputhur in S.C.No.145 of 2010 by the Judgment dated 01.06.2016 and enlarge the Petitioners/Appellants on bail, pending disposal of the abovesaid Criminal Appeal and thus render justice.

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

It is the case of the prosecution that when the victim girl, Hemapriya, [PW-1], was with her boy friend, Manikkaraj [PW-2] on 26.09.2009 around 2 'o' clock near Aruppukottai By-pass Road, the accused herein brandished masonry instruments and took Hemapriya [PW-1] to an isolated place and committed a rape on her. They also took away her 1 ½ sovereign chain and ½ sovereign ear rings.

2. The learned counsel appearing for the accused submitted that though the charge was under Section 376 IPC, the accused were



convicted for the offence under Section 376 (E) IPC, which was not in force as on the date of the offence. The learned counsel also submitted that before the test identification parade, Hemapriya [PW-1] has seen the accused in the police station. As regards the first contention, there are *prima facie* materials to show that the victim was subjected to rape thereby, attracting Section 376 IPC. Section 376(E) IPC is yet another species of rape and if the conviction of the petitioners for the offence under Section 376(E) is found to be vitiated on the ground that it was not in force as on the date of commission of offence, yet, for the act of rape, the accused can be convicted under Section 376 IPC simpliciter. This can be seen only at the time of final disposal of the case.

3. As regards the test identification parade, it is the case of Hemapriya [PW-1] that both the accused separated her from Manikkaraj [PW-2] and took her to an isolated place and raped her. Thus, she had sufficient time to be with the two accused during the incident. Thus, even if the test identification parade is vitiated, dock evidence of Hemapriya [PW-1] cannot stand automatically vitiated. The dock evidence of Hemapriya [PW-1] can be appraised only during the final disposal of the case.

4. Taking into consideration of the heinous nature of the offence perpetrated to a helpless girl, this Court is of the view that this is not a fit case to suspend the sentence and grant bail. In the result, this Criminal Miscellaneous Petition is devoid of merits and accordingly, the same is dismissed.

sd/-  
16/02/2018

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

TO

- 1 THE SESSIONS JUDGE,  
FAST TRACK MAHALIR NEETHIMANDRAM,  
VIRUDHUNAGAR DISTRICT
- 2 THE JUDICIAL MAGISTRATE, ARUPPUKOTTAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
VIRUDHUNAGAR AT SRIVILLIPUTHUR
- 4 THE INSPECTOR OF POLICE,  
ARUPPUKOTTAI TOWN POLICE STATION,  
VIRUDHUNAGAR DISTRICT.



5 THE SUPERINTENDENT,  
CENTRAL PRISON, MADURAI

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

ORDER  
IN  
CRL MP (MD) No.422 of 2018  
IN  
CRL A (MD) No.37 of 2018  
Date :16/02/2018

PK/PM-PN/SAR-2/26.02.2018 : 3P/7C