



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

Wednesday, the Tenth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.10802 of 2017

IN

CRL A(MD) No.476 of 2017

R. SANKAR

... PETITIONER/APPELLANT

Vs

STATE REP BY,
THE DEPUTY SUPERINTENDENT OF POLICE,
KARUR TOWN SUB DIVISION,
KARUR POLICE STATION,
KARUR DISTRICT.

... 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 imposed by the Judgement dated 20/06/2016 passed in S.C.No.20/2016 on the file of the Learned Mahalir Fast Court (Sessions Judge Mahalir Court), Karur and enlarge the petitioner on bail, pending disposal of the above Crl.A.

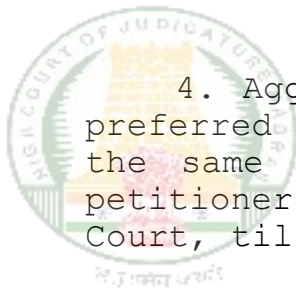
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.E.SOMASUNDARAM, Advocate for the petitioner and of MR.A.ROBINSON, Government Advocate on behalf of the Respondent, the court made the following order:-

The Petitioner / Sole Accused in S.C.No.20 of 2016, on the file of the learned Sessions Judge, (Fast Track Mahalir Court), Karur, while challenging his conviction and sentence, seeks appeal bail under Section 389(1) Cr.P.C.

2. After trial, he has been convicted and sentenced as under:

Conviction	Sentence
Section 5(m) r/w 6 of POCSO Act, 2012	10 Years R.I. + Fine Rs.1,000/-, i/d 1 Year S.I.

3. The fine amount has already been paid by the petitioner / accused and a receipt to that effect has also been filed. The petitioner is confined in Central Prison, Trichy from the date of Judgment.



4. Aggrieved by the Judgment of conviction, the petitioner has preferred an Appeal in Crl.A(MD)No.476 of 2017 before this Court and the same is pending. This Petition is filed by the accused / petitioner, seeking suspension of sentence imposed by the trial Court, till the disposal of the appeal.

5. The learned counsel appearing for the petitioner would contend that the alleged occurrence took place on 06.10.2015 at 05.00 pm., but the complainant was made on 08.10.2015 and the delay in making the complaint is not explained and the Doctor, who examined the victim, says no penetration is held and there is no injury or contusion or bruises and that the accused was attacked indiscriminately by P.W.3 and caused injuries due to enmity and on that aspect, a false complaint was given and that petitioner is having a prima facie case of acquittal in this appeal.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that the victim girl in this case is aged about 7 years old and on the date of occurrence, the trial Court has rightly convicted the petitioner on appreciating the evidence produced by the prosecution. The petitioner is not having any prima facie case in this appeal.

7. Perused the materials available on record including the Judgment of the trial Court. Heard and considered the submissions made by either side.

8. The petitioner has been charged under Section 5(m) r/w 6 of POCSO Act, 2012 and also convicted in this case. Prosecution has examined P.Ws.1 to 16 and marked Exs.P1 to P16 and M.O.1 during evidence. No evidence was adduced by the defence side. The victim girl in this case is 7 years old on the date of occurrence ie., on 06.10.2015. The date of birth of the said victim is 17.02.2009 as per Ex.P2. Complaint was given by P.W.1 / mother of the victim on 08.10.2015, after hearing the occurrence from her daughter / victim child on 08.10.2015. The victim girl was examined as P.W.12 and her statement was recorded under Section 164 of Cr.P.C., by P.W.5. Suggested motive between P.W.3 and accused is not admitted by P.W.1 and P.W.3 during their examination. The alleged assault against the accused and causing injuries are denied by P.W.1 and P.W.3. No contra evidences placed by the accused to prove the fact that the alleged occurrence and the complaint are motivated. Hence, Section 29 of the POCSO Act is also applicable at this stage. Assuming that there was a motive between P.W.3 and the accused, then the question arises as to how P.W.1 / mother of the victim, in use her victim child particularly, female child, aged about 7 years old, as a tool for punishing the accused in this case for the alleged motive between the accused and P.W.3. Section 5(m) of the said Act relates to commission of penetrative sexual assault on a child below 10 years. In the above stated circumstances, this Court finds that the petitioner is not having any prima facie ground for seeking suspension of sentence, as prayed for.



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9. In the result, this Criminal Miscellaneous Petition seeking suspension of sentence stands dismissed.

sd/-
10/01/2018

/ TRUE COPY /

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

TO

- 1 THE SESSIONS JUDGE, FAST TRACK MAHALIR COURT, KARUR.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY,
- 3 THE DEPUTY SUPERINTENDENT OF POLICE,
KARUR TOWN SUB DIVISION, KARUR POLICE STATION,
KARUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.10802 of 2017
IN
CRL A (MD) No.476 of 2017
Date :10/01/2018

PK/CM-VR/SAR-2/17.01.2018 : 3P/5C