



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

Tuesday, the Tenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP (MD) No.4132 of 2018

IN

CRL A (MD) No.265 of 2018

CHELLAPANDI

... PETITIONER/APPELLANT/
ACCUSED

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
USILAMPATTI,
MADURAI DISTRICT,
CRIME NO.62/2015

... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspending the execution of sentence passed in Spl.S.C.No.39/2016 dated 15/05/2018 on the file of the Learned Mahalir Neethimandram, Madurai and thereby enlarge the Petitioner/Appellant/Accused on bail to the satisfaction of the Trial Court.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.T.K.GOPALAN, Advocate for the petitioner and of Mr.K.SUYAMBULINGA BHARATHI, Government Advocate (Crl.Side) for the Respondent the court made the following order:-

Heard Mr.T.K.Gopalan, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

2.This Petition is filed to suspend the sentence passed against the petitioner imposed by the learned District Mahila Neethimandram, Madurai in Spl S.C.No.39 of 2016 dated 15.05.2018 pending disposal of the Criminal Appeal.

3.The case of the petitioner is that on 08.11.2015 at about 06.00 p.m., when minor Iyswarya Sri aged about 8 years was playing with her brother Jeysurya and other children near Panchayat Union Primary School at E.Ammapatti, the accused closed her mouth and carried her



to the Primary School Verandah and the petitioner rubbed the private parts of the minor girl with his private part. Hence, the complainant filed a case against the petitioner for the offence under Section 9(m) and 10 of Protection of Children from Sexual Offences Act, 2012. The trial Court after completion of the trial, convicted the petitioner and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo one year simple imprisonment.

4. On the side of the petitioner, it is stated that P.W.2 is the grandmother of the complainant and there is an enmity between the family of the victim and the that of the petitioner. P.W.2 has admitted that her chasity was questioned by the grandmother of the accused and that it was the motive for filing this false case. It is stated that the petitioner is the poosari of the temple and there is a dispute regarding the right of poosariship and on this motive, this false case has been foisted. It is further stated that P.W.1 has deposed that the Police has tape-recorded her statement, however, no tape-recorded statement was filed by the Police. The brother of the victim who was stated to have been playing with the victim at the time of occurrence was not examined as a witness. It is further stated that the simple injury stated in the AIR has not occurred due to the occurrence and the Doctor has deposed that there is possibility for the injury to be caused due to falling down.

5. It is further stated that in the AIR, it is stated that the occurrence has taken place at Usilampatti but as per the version of the prosecution the occurrence takes place in Ammapatti. This reveals that no such occurrence has taken place in Ammapatti. It is further stated that the statement recorded by the learned Judicial Magistrate is also doubtful as the learned Judicial Magistrate did not question the victim whether any body has induced her or tutored her. It is further stated that the petitioner is a married man and that the evidence of Doctor reveals that there is no rape committed upon the victim whereas P.Ws.1 and 2 deposed that the accused committed rape. Hence, he prayed to suspend the sentence imposed upon the petitioner till the disposal of the appeal.

6. On the side of the respondent, it is stated that the victim is 8 years old child studying 2nd standard at the time of occurrence. To prove the offence, no injury is necessary and the statement of the victim was recorded by the learned Judicial Magistrate under Section 164 Cr.P.C., and that the evidence of P.W.1 is clear and is supported by the statement recorded under Section 164 Cr.P.C., It is stated that after investigation, the Investigating Officer filed chargesheet and the same is taken on filed as Spl.S.C.No.39 of 2016 before the learned Mahalir Neethimandram, Madurai. During the trial, the prosecution has examined 22 witnesses marked 19 documents and marked 5 material objects. It is further stated that evidence of P.Ws.1 to 3 and the evidence of P.Ws.4 and 6 are supported by the evidence of the Medical Officer and the evidence of P.W.9 reveals that there is injury on the forehead of the victim. The submission



of victim girl before the Doctor and before the learned Judicial Magistrate are the same. The offence is clearly proved and he vehemently opposed for suspension of the sentence imposed upon the petitioner.

7. Records perused. The petitioner is in custody from 15.11.2018 and the matter to be decided in this petition and in the main appeal are the same. Considering the marital status of the petitioner and considering the age of the victim girl and also considering the grave nature of the offence, this Court is not inclined to suspend the sentence imposed upon the petitioner at this stage and hence, this petition is dismissed.

sd/-

10/07/2018

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

TO

1 THE JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, USILAMPATTI,
MADURAI DISTRICT.

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

4 THE SUPERINTENDENT, CENTRAL PRISION, MADURAI

+1. C.C. to M/S.T.K.GOPALAN Advocate SR.No.12723

GJM/RR/ASVM/12.7.18-3P-6C

ORDER

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CRL MP(MD) No.4132 of 2018

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Date :10/07/2018