

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fourth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3123 OF 2019

IN CRL.A.NO.488 OF 2018

SAKTHIVEL

[PETITIONER / APPELLANT]

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
TIRUPPUR DISTRICT.
(CR.NO.2 OF 2014)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.488 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the judgment dated 30.07.2018 made in S.C.No.229 of 2014 on the file of the learned Sessions Judge, Magalir Neethimandram(Fast Track Mahila Court), Tiruppur and enlarge the petitioner on bail pending disposal of the CRL.A.NO.488 OF 2018 [IN CRL.MP.NO.3123 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.488 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.N.MANOKARAN, Advocate for the petitioner and of MR.R.PRATHAP KUMAR ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner is the sole accused in SC.No.23/2016 on the file of Mahila Court, Tiruppur. He stood charged, tried and convicted for the offence u/s.376[1] IPC and the Trial Court, vide impugned judgment dated 30.07.2018, had sentenced him to undergo rigorous imprisonment for life, and to pay a fine of Rs.10,000/- with a default sentence of one year rigorous imprisonment and also granted set off u/s.428 Cr.P.C. Challenging the legality of the said conviction and sentence, the petitioner/appellant had preferred the present appeal and pending disposal of the appeal, had filed the above miscellaneous petition, seeking suspension of substantive sentence of imprisonment.

2 Mr.N.Manokaran, learned counsel for the petitioner/appellant would submit that P.W.4 is the victim and she is a married woman and at the time of the alleged occurrence on 05.02.2014, she was aged about 37 years and drawn the attention of this Court to the cross-examination of P.W.4 and would submit that P.W.4 has given inconsistent answer by saying that the petitioner/appellant married her and thereafter, had physical relationship and later on, denied the said fact and even from the testimony of P.W.3, who initially treated the victim, nothing has been elicited that she was physically assaulted by the petitioner/appellant forcefully and the testimony of P.W.9 who subsequently treated the victim, would also disclose that in the chemical analysis report, there was no indication as to the fact of having physical relationship and in the light of the said facts and circumstances, the Trial Court, ought to have awarded benefit of doubt and would further add that even assuming that the petitioner/appellant had committed the said crime, the sentence of imprisonment for life is highly disproportionate and since the chance of success is very bright, prays for suspension of substantive sentence of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the testimony of the victim, viz., P.W.4, has been amply corroborated by P.Ws.5 and 6 and also supported by the scientific evidence in the form of the testimony of P.Ws.3, 9 and 10 and the points urged by the learned counsel for the petitioner/appellant can be appreciated only at the time of final hearing of the appeal and prays for dismissal of this petition.

4 This Court has carefully considered the rival submissions and also perused the materials placed before it.

5 The testimony of the cross-examination of P.W.4/victim would disclose that she is given incoherent answer and it is also the evidence of P.Ws.3, 9 and 10 that the victim appears to have been slightly mentally retarded. The evidence of P.W.7 would also disclose that the petitioner/appellant came out of the house on the date of occurrence and he was soon followed by the victim/P.W.4 who was found to be crying with her hair untied. No doubt, the victim is a married lady, who was aged about 37 years at the time of occurrence and she used to have physical relationship. But the fact remains that the scientific evidence prove that her private part was torn and she was found bleeding and the initial treatment was given by P.W.3 by suturing the said injury. P.W.9 who subsequently treated the victim, would also disclose that she was subjected to physical relationship and denied the suggestion that on account of menstruation, there was excessive bleeding. The testimony of P.W.9 who assessed her mental capability would disclose that she is not consistent in her mental capability. In the considered opinion of the Court, the points urged by the learned counsel for the petitioner/appellant would revolve around appreciation of oral and documentary evidences and the said exercise can be done only at the

time of final disposal of this appeal. Therefore, this Court, is of the considered view that this is not a fit case wherein suspension of sentence of imprisonment can be granted.

6 In the result, the criminal miscellaneous petition is dismissed. Registry is directed to accord priority to prepare the typed set of documents for the purpose of giving an early disposal of this appeal.

-sd/-
04/03/2019

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 SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM
[FAST TRACK MAHILA COURT],
TIRUPPUR.

2 THE MAHILA COURT,
TIRUPPUR.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
TIRUPPUR DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1C.C. to M/S.N.MANOKARAN Advocate on payment of necessary charges SR NO.4558

Order

in
CRL MP.3123/2019
in
CRL.A.NO.488/2018

Date :04/03/2019

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MK:08/03/2019