

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Second day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3303 of 2018

IN CRL.A.No.137 of 2018

V.VISHNUBHASKAR,

[PETITIONER/APPELLANTS / ACCUSED]

Vs

THE STATE REP. BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,

ALL WOMEN POLICE STATION (EAST), KOVAI CITY,
COIMBATORE DISTRICT.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed on 16.11.2017 by the Learned District Mahila Court, Coimbatore on the petitioner in S.C.C.No.15/2016 and enlarge the petitioner on bail.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.T.VIJAYSHANKAR, 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 Justice M.M.SUNDRESH]

The petitioner/appellant is the sole accused in S.C.No. 15 of 2016 on the file of the learned Sessions Judge, Mahila Court, Coimbatore. After full-fledged trial, by judgement dated 16.11.2017, the learned Sessions Judge has convicted the petitioner/appellant for offence under Sections 5(l)(m)(n) read with 6 of The Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a further period of three months. Seeking suspension of sentence, the petitioner/appellant is before

this court with this miscellaneous petition.

2. The learned counsel for the petitioner submitted that a petition for divorce has been filed by the de facto complainant on 16.07.2015. The occurrence was said to have taken place in the month of October, 2015. Therefore, the very presence as projected by the prosecution witnesses is not true.

3. The learned counsel further submitted that there is material difference between the statement of the Doctor who deposed on behalf of the prosecution and the medical records. The doctor says that the child was suffering from urinary infection, whereas, the documents show that the child was treated for thyroid deficiency. Similarly, the statement of the Government Doctor differs from the statement of the private Doctor with respect to rupturing of the hymen. The specific case of the prosecution is that the offence was committed, when the petitioner took the child to the hospital for treatment, whereas, the statement is to the effect that it was committed in the car, when the petitioner took the child to the school. The hospital records would also go to show that the child is said to have been molested by unknown persons. The statement given by the Doctor is to the effect that due intimation was given to the child welfare authority and thereafter, the authority concerned had given a complaint to the police, but, the same has not been established by the prosecution. There is also no evidence to substantiate the same. The petitioner is under incarceration for more than 2 1/2 years as of now. Thus, according to the learned counsel, there are arguable in the appeal for acquittal and, therefore, the suspension of sentence petition will have to be allowed.

4. The learned Additional Public Prosecutor submitted that apart from the other witnesses, the victim child had deposed before the court. The court was satisfied with the mental capacity of the child. The evidence of the doctor was also taken into consideration. After having considered the available evidence, the trial court has rightly convicted the petitioner for the offences under Sections 5(1)(m)(n) read with 6 of The Protection of Children from Sexual Offences Act, 2012 and sentenced him accordingly. Therefore, this petition will have to be dismissed.

5. We find some force in the submissions made by the learned counsel for the petitioner. The fact that the petition for divorce has been filed by the mother of the victim child on 16.07.2015 is not in dispute. There is no prima facie material to establish the presence of the petitioner with the child thereafter with the consent of the prosecution witness. The occurrence was in the month of October, 2015. There are contradictory statements in the medical evidence with respect to the nature of the treatment given to the child. On the one hand, the doctor says that the child was treated for urinary infection, but, on the other hand, the records would reveal that the child was treated for thyroid deficiency. There are discrepancies in the evidence of the doctor from the Government Hospital and the doctor from the private hospital. There is difference in the place of occurrence also. According to the prosecution, the petitioner took the

child to the hospital and in the interregnum, he had committed the offence, whereas, the evidence is to the effect that it was committed in the car, when the petitioner took the child to the school. Thus, we are of the view that there are arguable points in this appeal, particularly, when there is no evidence to substantiate the statement made by the doctor that due intimation had been given to the Child Welfare Authority, who, in turn, gave a complaint to the police. Neither the complaint was marked nor the person concerned from the Child Welfare Authority had been examined in court. Moreover, the petitioner has been under incarceration for more than 2 1/2 years.

6. Considering the above, we are inclined to allow this petition. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of Sessions Judge, Mahila Court, Coimbatore, and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-
02/08/2019

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 DISTRICT MAHILA COURT,
COIMBATORE.

2 THE SESSIONS JUDGE,
MAHILA COURT, COIMBATORE.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (EAST),
KOVAI CITY,
COIMBATORE DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.T.VIJAYSHANKAR Advocate on payment of necessary charges SR.NO.66830

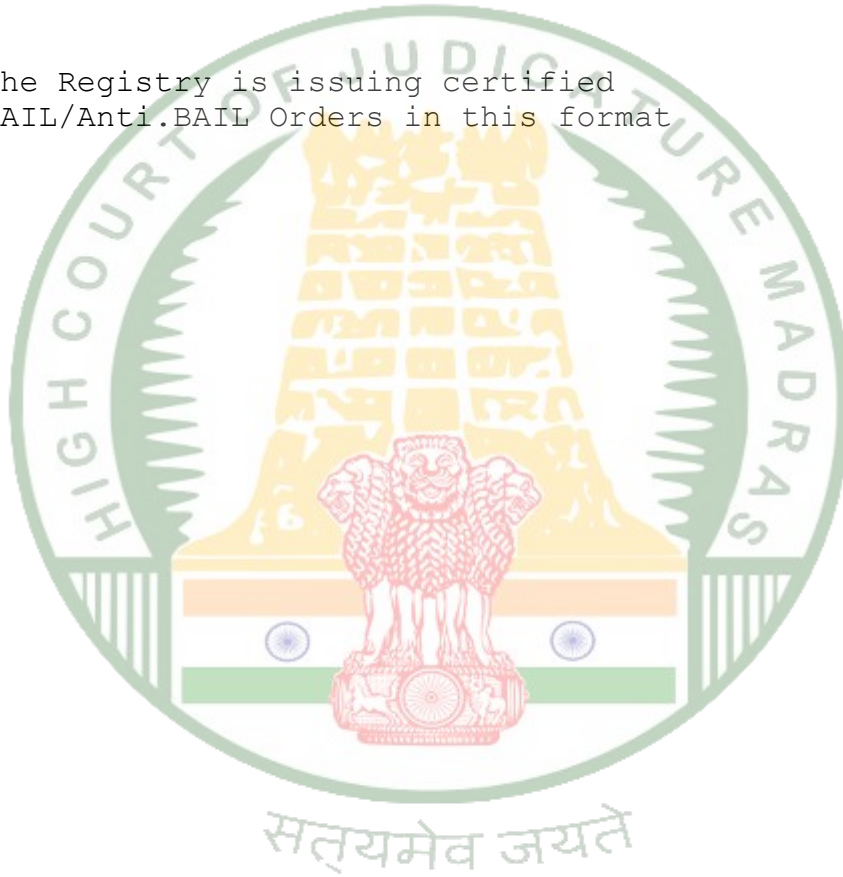
Order

in
CRL MP.3303/2018
in
CRL.A.No.137/2018

Date :02/08/2019

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