

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twelfth day of July Two Thousand Nineteen

PRESENT

The Hon'ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.8076 of 2019

IN CRL.A.368 OF 2019

C.VIJAY

[PETITIONER]

Vs

THE STATE REP.BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
W-3 ALL WOMEN POLICE STATION,
CHINTHADHIRIPET, CHENNAI-600 002.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.368 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on him by the Special court for cases under POCSO Act 2012/Mahila Court, Chennai in S.C.No.33 of 2018 dated 06.05.2019 enlarge him on bail pending disposal of the above Crl.A.No.368 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.368 of 2019 on the file of the High Court and upon hearing the arguments of Mr.V.Padmanabhan, learned Senior Counsel for Mr.S.B. Viswanathan, Advocate for the petitioner and of MR. KRITIKA KAMAL.P, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The petitioner has been convicted in Spl.S.C. No.33 of 2018 by the Mahila Court, Chennai on 06.05.2019 of the offence under Sections 10 and 12 of the POCSO Act and has been sentenced to various terms of imprisonment, the maximum being 5 years rigorous imprisonment for the offence under Section 10, ibid.

2 Challenging the conviction and sentence, the petitioner has preferred the present appeal and is seeking suspension of sentence and bail.

3 Heard Mr. V. Padmanabhan, learned Senior Counsel representing Mr. S.B. Viswanathan, learned counsel on record for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 It is the case of the prosecution that on 08.10.2016, about 7.00 p.m., when three girl children viz, "X", aged 5 years, "Y", aged 6 years and "Z", aged 7 years (names not disclosed for the sake of anonymity) were playing "doctor game" near the petitioner's house, the petitioner lured them to come to his house and play by saying that he has a hospital in his house; swayed by his words, the children went to his house where he is said to have sexually assaulted them.

5 Mr. V. Padmanabhan, learned Senior Counsel contended that it is the specific case of the prosecution that the sexual assault was in the terrace of the house at No.50, Boopathy Nagar, Egmore, where the petitioner was residing, whereas, the evidence adduced by the prosecution shows that there was no terrace in the said house. In support of this contention, he took this Court through the final report, charge and rough sketch and pointed out to this Court that the prosecution had failed to prove the exact place of occurrence. He also contended that the medical examination of the victims girls does not show that they were sexually assaulted.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned Senior Counsel appearing for the petitioner.

7 The complaint in this case has been lodged by Prakash (P.W.1), father of the victim girl "Y". In his evidence, he has stated that in the ground floor portion of the house in question, the petitioner was living with his parents; in the first floor portion of the house, the petitioner's brother's family was residing and in the second floor portion, which is thatched portion, the family of the victim girl "X" was residing.

8 In a case involving sexual abuse of children, the Court should bear in mind the totality of the circumstances of the case while appreciating the evidence on record. This Court perused the evidence of the three victim girls and it is seen that they have all stated that they were playing "doctor game" in the road and the petitioner called them to his house and asked them to play inside his house; when they innocently went inside his house, he locked the door from inside and switched off the lights; he removed their undergarments and fondled their private parts. These three children have narrated the same version to the Magistrate when they were examined under Section 164 Cr.P.C. There is no reason for all the three victim children to implicate the petitioner falsely. Just because the police had failed to show the terrace in the rough sketch, that cannot be a good reason to completely disbelieve the evidence of the three victim children. That apart, it will defy credulity if one were to accept the theory that the three children were sexually abused in an open terrace, in the manner described by them.

9 As regards the contention of the learned Senior Counsel qua absence of medical evidence, it is not the case of the prosecution that the petitioner had committed penetrative sexual assault for the

victim children to suffer injuries in their private parts. The three victim children have stated that the petitioner removed their panties and fondled their private parts. That is the reason why the petitioner has been convicted under Sections 9 and 10 of the POCSO Act and not under Sections 4 and 6, *ibid*.

10 Taking into consideration the facts and circumstances of the case, this Court is of the view that this is not a fit case for grant of suspension of sentence and bail.

Ex consequenti, this Crl.M.P. for suspension of sentence and bail is dismissed.

-sd/-
12/07/2019

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 SPECIAL COURT FOR
CASES UNDER POCSO ACT, 2012/MAHILA COURT, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
W-3 ALL WOMEN POLICE STATION,
CHINTHADHIRIPET, CHENNAI-600 002.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

C.C. to M/S.S.B.VISWANATHAN Advocate on payment of necessary charges

WEB COPY

Order
in
CRL MP.8076/2019

IN CRL.A.368 OF 2019

Date :12/07/2019

From 7.2.2001 the Registry is issuing certified
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