

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eighth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.8985 of 2019

IN CRL A.433/2018

P.PATHAP KUMAR NAYAK, [PETITIONER]

Vs

STATE REP BY [RESPONDENT]
THE INSPECTOR OF POLICE,
W-12, ALL WOMEN POLICE STATION,
HARBOUR RANGE, CHENNAI-1.
CR.NO.51 OF 2014.

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 passed by the learned Sessions Judge, (Special Court for cases under POCSO Act 2012) Mahila Court, Chennai in S.C No.428 of 2014 dated 27.02.2018 and release the petitioner on bail in Crl.A.No.433/2018 disposal of the above appeal.

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.S.SURESH, Advocate for the petitioner, and of M/S.G.RAMAR, Government Advocate (Crl.Side) on behalf of the Respondents the court made the following order:-

It is the case of the prosecution that the petitioner was an army man and was a neighbour of the victim girl who was aged about 11 years. The father of the victim girl was also an army personnel and they were living in the defence colony.

2.It is alleged that on 28.08.2014, the mother of the victim girl (-PW1) and the wife of the accused/appellant had gone to the market to make purchases for the Vinayagar Chathurthi celebrations, leaving the victim girl, her brother and the daughter of the accused at home. All these three children were playing in that area. It is further alleged that the accused called all the three children to his house and after his daughter had slept, he asked the brother of the victim girl to go down and play and used that opportunity to sexually abuse the victim

3. On these facts, the trial Court has convicted the appellant under Section 6 of the POCSO Act, 2012 and sentenced him to undergo various terms of imprisonment, the maximum being 10 years rigorous imprisonment. Challenging the conviction and sentence, the accused has filed the present appeal seeking suspension of sentence and bail.

4. Heard Mr. S. Suresh, learned counsel for the petitioner and Mr. G. Ramar, the learned Government Advocate (Crl. Side) appearing for the respondent.

5. Mr. Suresh made the following submissions :

- a) In Ex. P1 complaint which was given in Oriya language, PW1 has stated that she had gone along with her children to the market, when that is so, the very foundation of the prosecution case falls down.
- b) There is no medical evidence to show that there was any injury in the private part of the victim girl.
- c) That the accused examined himself as DW1 in order to discharge the burden cast by the POCSO Act.

6. Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

7. In a petition filed seeking suspension of sentence and bail, this Court is not required to delve deep into evidence and it would suffice to find out if there are infirmities patent on the face of the record.

8. In the case at hand, the complaint was given by PW1 only after she returned from the market and when she was told about the incident by her daughter, the victim girl. Admittedly, the complaint was given in Oriya. The stray statement in the complaint that the children also accompanied PW1 to the market, on the face of it, militates against the subsequent averment that on return from the market, the victim child informed her that she was sexually assaulted by the appellant. Dehors this alleged infirmity, a perusal of the evidence of the child *prima facie* shows that after her mother left for the market along with the wife of the accused, the accused called her, her brother and his daughter to his house. After sometime, his daughter fell asleep, then the accused handed over his mobile phone to the victim girl's brother and asked him to play with it outside the house. When her brother was playing with the mobile phone outside the house, the accused closed the door and removed the undergarments of the victim girl and abused her. The witness was examined in-chief on 23.06.2015, but was not cross-examined on the same day. She was recalled almost one year later and was cross-examined on 26.04.2016. The defence was not able to make any serious dent in the cross-examination of the victim girl.

9. As regards the contention that the medical evidence does not support the prosecution assertion that there was penetration sexual assault, in the opinion of this Court, the same can be examined only during the final disposal of the appeal. Suffice it to state here

that the evidence of the victim girl does not suffer from any serious infirmity for this Court to lean in favour of the accused and grant him suspension of sentence and bail. Similarly, the evidence of the accused who examined himself as DW1, can be appraised only during the final disposal of the case and not while deciding this petition.

In the result, this petition is dismissed as being devoid of merit

-sd/-
08/07/2019

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 SESSIONS JUDGE,
(SPECIAL COURT FOR CASES UNDER POCSO ACT
2012) MAHILA COURT, CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
W-12, ALL WOMEN POLICE STATION,
HARBOUR RANGE,
CHENNAI-1.

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

WEB COPY

Order
in
CRL MP.8985/2019

in
CRL A.433/2018

Date :08/07/2019

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