

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Eighth day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.9476 of 2018

in CRL.A.NO.412/2018

VIJAYAN,

[PETITIONER/APPELLANT/ACCUSED]

vs

STATE BY THE INSPECTOR OF
POLICE, ALL WOMEN POLICE STATION,
THIRUVANNAMALAI,
THIRUVANNAMALAI DISTRICT.
CR.NO.8/2014

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.412 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioner in S.C.No.133/2014 on the file of the Learned Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, Thiruvannamalai District dated 15.11.2017 and enlarge the petitioner on bail pending disposal of the said Crl.A.No.412 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.412 of 2018 on the file of the High Court and upon hearing the arguments of M/S.K.SELVA KUMARASWAMI, Advocate for the petitioner and of MRS. V.SARATHA DEVI, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

The petitioner/appellant is the sole accused in S.C.No.133 of 2014, on the file of the Sessions-cum-Mahalir Needhimandram, Thiruvannamalai. By judgment dated 15.11.2017, the trial Court has convicted the appellant for offence under Section 366(A) of the Indian Penal Code, Section 9 of the Prohibition of Child Marriage Act, 2006 and under Section 4 of Protection of Children from Sexual Offence Act, 2012. The maximum punishment imposed on the petitioner/accused is 10 years Rigorous Imprisonment for the offence under the Protection of Children from Sexual Offence Act, 2012, with usual default clause. Hence, the petitioner seeks suspension of sentence.

2.The learned counsel for the petitioner/appellant would pitch his argument on the ground that the age of the victim girl was not established at all. During the course of argument, the learned

counsel would draw the attention of this Court to the evidence given by the Doctor, who has deposed that the victim girl was around 17 years old at the time of occurrence, as per his report. When he was confronted during cross-examination, he has deposed that it is possible that there can be variation of one or two years in respect of the age of the victim girl, as certified by him. The learned counsel would further draw the attention of this Court to the evidence of the Investigating Officer, who was examined as P.W.16, and submitted that the victim girl's Birth Certificate, Transfer Certificate were not filed before the Court and no specific reason was assigned for not doing so. In Paragraph No.19 of the judgment of the trial Court, the trial Court has observed that the victim girl had studied up to +2 at the time of occurrence and therefore, she could not have crossed the age of 18. According to the learned counsel appearing for the petitioner that the trial Court has proceeded based on presumption and held that the POCSO Act was attracted in the instant case.

3.The learned Government Advocate appearing for the prosecution would submit that as per Juvenil Justice Rules, the lowest of the age must be taken into consideration and in which event, the Doctor Certificate, certifying the victim girl as 17 years, must be taken into consideration and therefore, the provisions of the POCSO Act get attracted in this case. According to the learned Government Advocate, in the absence of Birth Certificate, School Certificate, it is possible to obtain certificate from the Doctor.

4.Heard the learned counsels and perused the materials and the pleadings placed on record. Since the issue relating to the age of the victim girl is the very substratum of the case of the prosecution to bring the offence committed by the accused within the mischief of POCSO Act, the age of the victim girl needs to be established beyond any doubt at all.

5.In the instant case, it appears that though the victim girl has studied up to +2 in a school, unfortunately, the Investigating Officer has not cared to procure the certificates from the school in order to establish the factum of her age unequivocally. The certificate issued by the Doctor is an acceptable document in such a situation where there was no possibility of producing any school certificates in order to establish the age of the victim girl.

6. In this case, admittedly, the victim girl has studied up to +2 at the time of occurrence and what prevented the Investigating Officer from procuring any certificate from the school to establish the age of the victim girl remains unanswered. In fact, P.W.16, the Investigating Officer, deposed that there was no specific reason for not producing the documents, viz., Birth Certificate or Transfer Certificate of the victim girl. This only reflects the shoddy investigation conducted by the Investigating Officer.

7. When the age of the victim girl remains doubtful and the same having not been proved to the hilt, this Court has to consider the case of the petitioner/appellant/accused as to whether he can be *prima facie* accused of offences under the POCSO Act. Since there appears to be a genuine doubt in regard to the age of the victim girl and even the Doctor in his cross-examination has deposed that the age certified by him can have variation of one or two years, the benefit of doubt needs to be extended to the accused for the purpose of suspending the sentence, pending disposal of the appeal, which may take some time.

8. In view of the above, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute 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 the Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, and on further condition that the petitioner shall report before the trial Court daily at 10.30 a.m., pending disposal of the appeal.

-sd/-

08/01/2019

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,
FAST TRACK MAHIL COURT, THIRUVANNAMALAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

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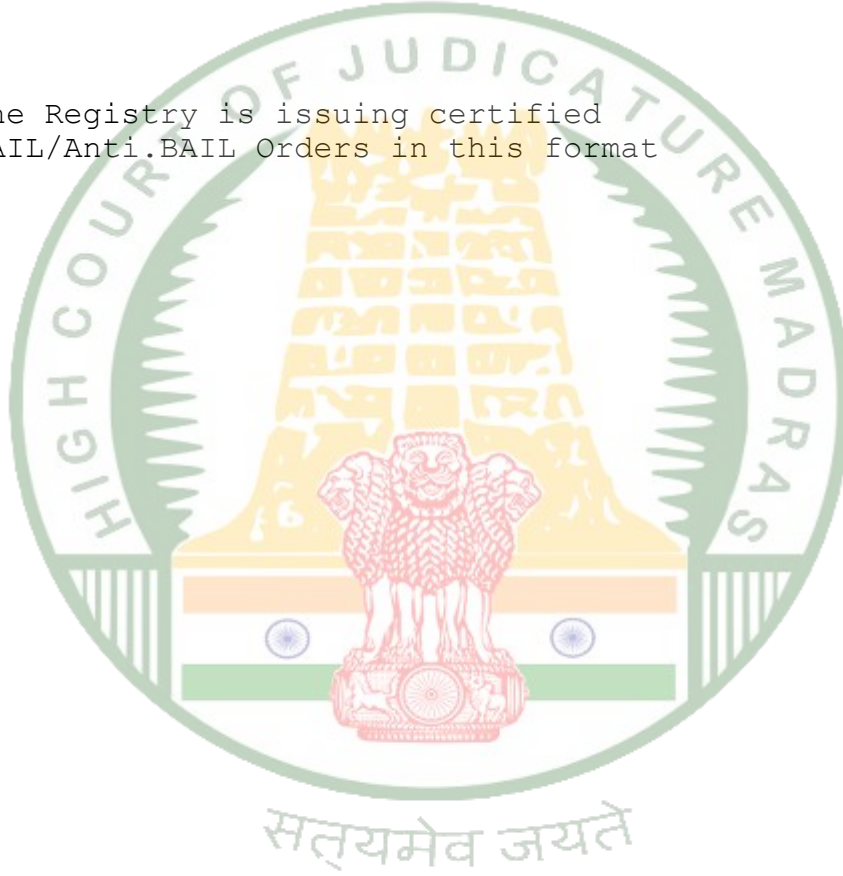
+1 C.C. to M/S.K.SELVAKUMARASWAMI Advocate on payment of
necessary charges -Sr.518

Order

in
CRL MP.9476/2018
in CRL.A.NO.412/2018

Date :08/01/2019

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copies of the BAIL/Anti.BAIL Orders in this format
ths : 09.01.2019



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