

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Eighth day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.9935 of 2018

IN CRL A.433/2018

P.PATHAP KUMAR NAYAK

[PETITIONER]

vs

STATE REP BY

[RESPONDENT]

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 Memorandum of Grounds in CRL A.433/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner and enlarge him on bail by the Learned Session Judge (Special Court for Cases under POSCO Act 2012) Mahila Court, Chennai in S.C.No. 428 of 2014 dated 27.02.2018 and release the petitioner on bail pending in Crl.A.No. of 2018 disposal of the above CRL A.433/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.433/2018 on the file of the High Court and upon hearing the arguments of M/S.S.THANGARAJA, Advocate for the petitioner and of MR.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.428 of 2014, on the file of the Special Court for Cases under POCSO Act, Mahila Court, Chennai. By judgment dated 27.02.2018, the trial Court has convicted the appellant for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for brevity) and sentenced to undergo Rigorous Imprisonment for 10 years and also imposed with a fine of Rs.10,000/-, with usual default clause. Challenging the said conviction and sentence, the petitioner seeks for suspension of sentence.

2.The learned counsel for the petitioner/appellant submitted that the petitioner has not committed any offence and he has been falsely implicated in this case. He would further submit that P.W.7 the Child Specialist, who examined the victim girl, has deposed that there was no external injuries found on the victim girl. In the report of the Forensic Expert, which is marked as

Ex.P12, it is categorically stated that no spermatozoa was found in the smear and swap. Therefore, the learned counsel would submit that the medical evidence has not supported the case of the prosecution. He would further submit that the investigation is tainted and the earlier report is suppressed. The version of the prosecution has not been corroborated by the medical certificate issued by the Doctor, who examined the victim. The entire case as projected by the prosecution is not correct. Therefore, the learned counsel would pray for suspending the sentence and enlarging the petitioner on bail.

3.The learned Government Advocate would submit that there are clinching materials in support of the prosecution case and on the basis of the said materials, the lower Court has passed the impugned order, imposing ten years Rigorous Imprisonment on the petitioner/accused. She would submit that the victim girl is the friend of petitioner's daughter and on the fateful date, she went to the house of the petitioner/accused to watch T.V. Taking advantage of the situation, the petitioner/accused molested her. She would further submit that the petitioner has been charged with for his committing a grave offence under the provisions of of the POCSO Act. The petitioner/accused raped the victim girl of eleven years old and threatened her not to reveal the same to anybody. The medical report also corroborates the version of P.W.1-the mother of the victim girl and the statement of P.W.1-the victim girl. There are clinching materials available on record pointing the guilt of the petitioner/accused. She would therefore submit that the petitioner, who committed such a heinous crime is not entitled to be released on bail. Accordingly, she prays for dismissal of the petition.

4.On going through the entire papers and taking into consideration the submissions made by the learned Government Advocate and the nature of offence committed by the petitioner/accused, this Court is not inclined to suspend the sentence. Accordingly, this petition is dismissed.

सत्यमेव जयते -sd/-
28/01/2019

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

<https://hcservices.ecourts.gov.in/hcservices/>

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

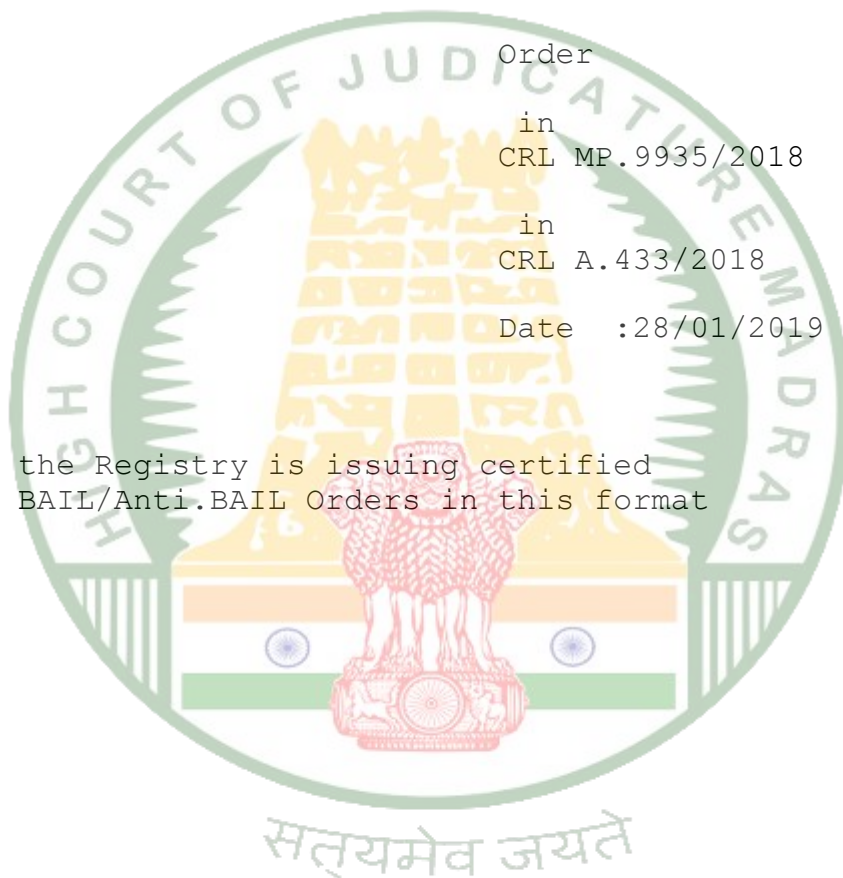
3 THE SUPERINTENDENT,
CENTRAL PRISON,
PUZHAL, CHENNAI.

+1C.C. to M/S.S.THANGARAJA Advocate on payment of necessary
charges in SR.NO. 1795

Order
in
CRL MP.9935/2018
in
CRL A.433/2018
Date :28/01/2019

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MLT-31/01/2019



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