

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twelfth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.9404 of 2017

IN CRL A.455/2017

MARUTHAPILLAI

[PETITIONER / APPELLANT]

Vs

STATE THROUGH THE INSPECTOR OF POLICE, [RESPONDENT]
MOHANUR POLICE STATION,
NAMAKKAL DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.455/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment made on 01.03.2017 in Spl.C.C.No.27 of 2015 on the file of the Mahila Court, Namakkal convicting the appellant under section 376(1) of IPC to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.20,000/- each and i/d to undergo RI for a period of 2 years [IN CRL.MP.NO.9404 OF 2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.455/2017 on the file of the High Court and upon hearing the arguments of M/S.K.S.KARTHIK RAJA, Advocate for the petitioner and of M/S.T.P.SAVITHA, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence of imprisonment passed in Special C.C.No.27 of 2015 dated 01.03.2017 on the file of the Fast Track Mahila Court, Namakkal, convicting the petitioner under Section 376(1) of IPC to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.20,000/- and in default to undergo Rigorous Imprisonment for a period two years.

2. The case of the prosecution is that the complainant (P.W.1) is the mother of the victim girl Gokila (P.W.3), who is a deaf and dumb The complainant and his daughter along with accused and other persons were grazing their goats in Arur lake and the complainant used to return home daily at 3.00 P.M., leaving her daughter under the custody of others in order to milk the cattle reared by her. The victim Gokila used to return home at 6.00 P.M. daily along with others. While so, on 27.11.2009 at about 3.00 P.M., the complainant returned home leaving the victim girl under the custody of the accused. Taking advantage of the handicap of victim, the accused

sexually assaulted the victim Gokila, he took her near a Palm tree and raped her without her consent, for which the accused had committed the offence under Section 376(1) of CPC.

3. To prove the case of prosecution, it had examined 15 witnesses and marked 15 documents. No oral and documentary evidence was adduced on the side of the accused.

4. Upon consideration of the oral and documentary evidence, the trial Court convicted and sentenced the accused as above. Challenging the conviction and sentence, the accused has preferred appeal. Along with the appeal, the accused filed petition seeking suspension of sentence.

5. The learned counsel for the petitioner submitted that there are several infirmities and inconsistencies found in the prosecution case. He would submit that there are contradictions in the material particulars between the evidence of the prosecution witnesses. According to the learned counsel, the occurrence as alleged by the prosecution did not happen and the Mahila Court on an erroneous appreciation of law and facts convicted the petitioner. The petitioner has got fair chance of succeeding in the appeal. The learned counsel further submitted that the petitioner was now aged 79 years and was in custody for more than two years.

6. I heard Mr.K.S.Karthik Raja, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

7. The main infirmity pointed out by the learned counsel for the accused is that the Mahila Court failed to consider the evidence of P.W.3 that the accused cannot do sexual act, as he was suffering from erectile dysfunction and that he might only have mental feelings to have intercourse. The other infirmity pointed out by the learned counsel for the accused is that the Investigating Officer has not enquired the victim girl, for which no reason was revealed by the prosecution side. That apart, the learned counsel for the accused also pointed out huge delay of four more years in sending the statements recorded under Section 161 Cr.P.C. to the Court.

8. In view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal as contended by the learned counsel for the appellant and also the fact remains that the accused is in custody for more than two years i.e. from 01.03.2017 and also considering the age of the accused and further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner is entitled to the relief of grant of suspension of sentence in the interest of justice.

9. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Fast Track Court, Namakkal, and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal. It is made clear that the petitioner should not indulge any such activities hereafter and if anything adverse is brought to the notice of this Court, the substantive sentence suspended in this order will be revoked automatically.

-sd/-

12/03/2019

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 FAST TRACK MAHILA COURT,
NAMAKKAL.

2 THE SESSIONS JUDGE,
MAHILA FAST TRACK COURT, NAMAKKAL.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
MOHANUR POLICE STATION,
NAMAKKAL DISTRICT.

+1C.C. to M/S.K.S.KARTHIK RAJA Advocate on payment of necessary charges SR NO.5139

Order

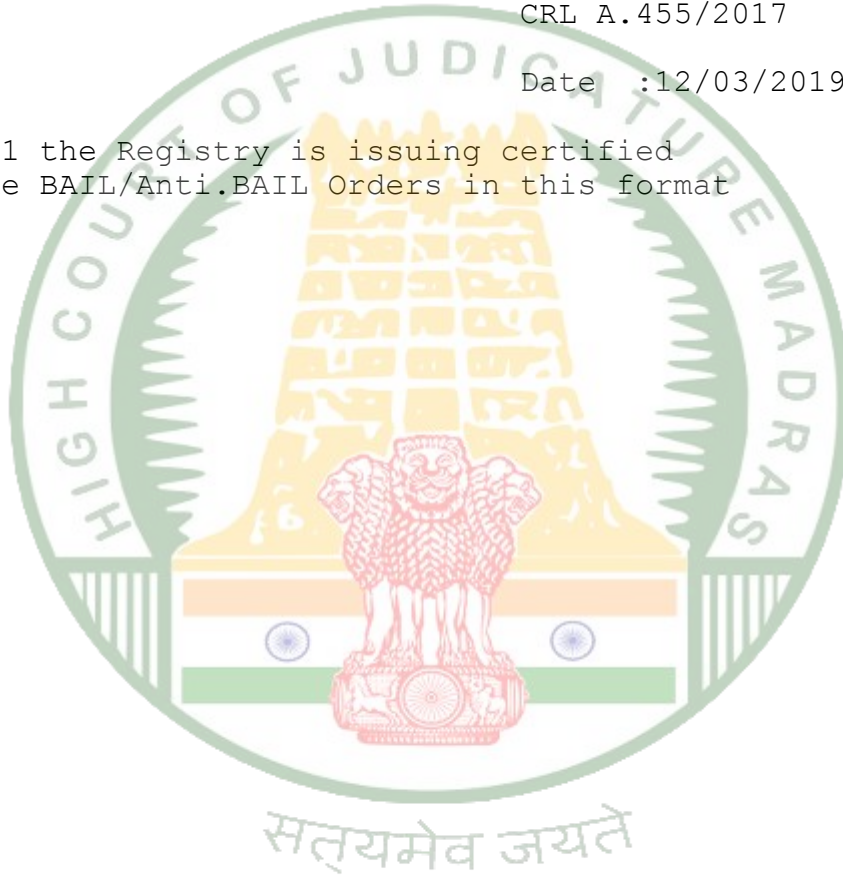
in
CRL MP.9404/2017

in
CRL A.455/2017

Date :12/03/2019

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MK:12/03/2019



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