

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.13771 of 2018

IN CRL A.627/2018

BALAMURUGAN

[PETITIONER]

Vs

THE STATE REP. BY,
INSPECTOR OF POLICE, ALL
WOMEN POLICE STATION,
ATTUR, SALEM DISTRICT.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.627/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of Appellant/Accused under Sec. 8 R/W 7 of Posco Act 2012 for 5 years arrive R.I. of 5 years and fine of Rs.10,000 failing which to undergo 6 months S.I.. Under Sec. 294(b) 3 months R.I., Fine Rs.500/- failing which 2 weeks S.I. Under section 323 IPC 1 year S.I. Fine Rs.1000/-failing which 2 months S.I. As ordered in Spl.S.C.NO.3 of 2015 dated 28.09.2018 on the file of the Sessions Judge, Mahila Court, Salem, pending disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.627/2018 on the file of the High Court and upon hearing the arguments of M/S.K.MOHANAMURALI, Advocate for the petitioner and of M/S.V.SARATHA DEVI GOVERNMENT ADVOCATE [CRL.SIDE] on behalf of the Respondent the court made the following order:-

The petitioner is the sole accused in Special S.C.No.3 of 2015, on the file of the Mahalir Needhimandram, Salem. By judgment dated 28.09.2018, he was convicted for offences under Section 8 r/w. Sec 7 of the Protection of Children from Sexual Offences Act, 2012 and Sections 294(b) and 323 of the Indian Penal Code and sentenced to undergo Five years Rigorous Imprisonment for offence under the POCSO Act and was also sentenced under the other provisions of the IPC with usual default clause. Challenging the said conviction and sentence, the petitioner has filed the above appeal. Pending appeal, he seeks for suspension of sentence.

2.The learned counsel for the petitioner would submit that the petitioner/accused is a B.E. Graduate and he has not committed any offence as projected by the prosecution. He would further submit that there was previous enmity between the family of the accused and the defacto complainant in regard to the fall of rain water from the house of the accused during rainy season, apart from other civil

disputes. Enraged by the same, the defacto complainant has lodged a false complaint against the petitioner. There was no direct eyewitness to the occurrence. The FIR was also lodged belatedly. P.W.4, the neighbour of the victim girl, on whose statement the prosecution places heavy reliance, was not at all there in the picture. P.W.4 was introduced by the prosecution during the course of trial. Originally the mother of the victim girl has not stated anything about the crime committed by the petitioner. Even assuming that the petitioner has committed any offence, the same would not attract the provisions of Section 7 of the POCTO Act. It is also the submission of the learned counsel that there are several infirmities and inconsistencies in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. Hence, the learned counsel would pray for suspending the sentence.

3. Heard the learned Government Advocate (Criminal Side) on the submissions made by learned counsel for petitioner. She would submit that P.W.4, the neighbour of the victim girl, has clearly narrated about the occurrence and her version is also supported by the deposition of P.W.1, as both of their versions corroborate with each other. She would also submit that there are clinching materials available on record so as to rope the accused in the crime and the witnesses examined on the prosecution side also corroborate with each other. Therefore, the learned Government would pray for dismissing the petition.

4. Considering the facts and circumstances of the case and 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 learned counsel for petitioner, 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 herein is entitled to the relief of grant of suspension of sentence.

5. 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 for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Salem, and on further condition that the petitioner shall appear before the said Court once in a week i.e. on every Monday at 10.30 a.m. pending disposal of the criminal appeal.

-sd/-

28/01/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

TO

1 THE SESSIONS JUDGE,
MAHILA COURT, SALEM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ATTUR, SALEM DISTRICT.

+1C.C. to M/S.K.MOHANAMURALI Advocate on payment of necessary
charges in SR.NO. 6307

Order

in
CRL MP.13771/2018

in
CRL A.627/2018

Date :28/01/2019

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MLT-30/01/2019

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