

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Eleventh day of June Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.17229 of 2018

in CRL.A.No.822 of 2018

MURUGESAN @ MURUGESH

[APPELLANT / COMPLAINANT]

Vs

1 THE STATE REP BY ITS
INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DENKANIKOTTAI, KRISHNAGIRI.

[RESPONDENT]

2 ANANDHA HOSTEL,
MATHIGIRI KOOT ROAD,
HOSUR TALUK, KRISHNAGIRI DISTRICT

[SUO MOTO IMPLEADS]

3 THE CHILD WELFARE COMMITTEE
DISTRICT CHILD PROTECTION OFFICER,
LONDENPET, KRISHNAGIRI-635002.

[SUO MOTO IMPLEADS]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.822 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence made in Spl.C.C.No.30 of 2016 on the file of **(*)the Sessions Judge, Fast Track Mahila Court Judge, Krishnagiri** and enlarge him on bail pending disposal of this Criminal revision petition and pass such other further orders.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.822 of 2018 on the file of the High Court and upon hearing the arguments of M/S.R.DHINESHKUMAR, Advocate for the petitioner, and of MR.R.PRATHAP KUMAR Additional Public Prosecutor on behalf of the Respondent for R1, the court made the following order:-

Order of the Court was made by M.NIRMAL KUMAR, J.,

The petitioner is the accused in the above case has filed this petition seeking suspension of sentence and bail.

2.The petitioner was found guilty by Judgment dated 27.09.2018 passed by the learned (*)**the Sessions Judge, Fast Track Mahila Court Judge, Krishnagiri** The learned Sessions Judge convicted the petitioner and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year rigorous imprisonment for the offence under Section 366 of IPC; to undergo 12 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo two years rigorous imprisonment for the offence under Section 5(1) r/w 6 of POCSO Act, 2012; to undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo two years rigorous imprisonment for the offence under Section 3(2)(v) of SC/ST Act. The petitioner was acquitted for the offence under Section 506(ii) of IPC.

3.The case of the prosecution is that on 22.10.2015 during Dasara Holidays the victim, who was the classmate and the friend of Vanmathi (PW4, the daughter of the petitioner) had stayed in PW4 house at Choppukuttai. The petitioner at about 11.00 p.m. While the victim was in sleep against her wish had physical relationship with her, threatened her not to disclose the same to any one. Whenever, the victim visited her friend PW4's house, the petitioner had physical relationship against the wish of the victim, thereby, the victim had become seven months pregnant. On coming to know about the same, on 30.04.2016, the petitioner had kidnapped the minor victim and confined her in Coimbatore.

4.The case came to be registered on the complaint given by the victim on 03.06.2016 to the All Women Police Station, Dhenkanikottai, who had registered the case in Crime No.12 of 2016 and thereafter, investigation was transferred on the direction of the Superintendent of Police, Krishnagiri to PW19, Deputy Superintendent of Police, Dhenkanikottai, who had taken over the investigation, examined the witnesses, collected documents and filed the charge sheet before the concerned Court. The prosecution in this case had examined PW1 to PW20 and marked Ex.P1 to P22.

5.PW1 is the victim. PW2 and 3 are the father and mother of the victim. PW4 is the friend of PW1 and daughter of the petitioner. PW5 is the mother of PW4 and wife of the petitioner. PW6 and 7 are the brothers of the petitioner. PW8 to PW10 are the Doctors, who had examined the victim and the petitioner. PW11 and 12 are the Village Administrative officers before whom the observation mahazar and rough sketch had been prepared. PW13 and 17 are the witnesses for the arrest and confession of the petitioner. PW14 is the Headmaster of John Brito School in which PW1 had studied her 11th Standard. PW15 and 16 are the Tahsildars, who had given community certificates of the accused/petitioner and the victim/PW1. PW18 is the Inspector of Police, who had registered the FIR and conducted initial investigation. PW19 is the Deputy Superintendent of Police, who had

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conducted the investigation and filed the charge sheet. PW20 is the Judicial Masigtrate, who had recorded the 164 statement i.e. Ex.P17 of the victim.

6.PW1, the victim and PW4 were studying together from 7th Standard to 11th Standard and were staying in the hostel together. Both the parents of the victim and PW4 used to visit them. Both parents treated them alike. PW1 during holidays used to go and stay with PW4 at the petitioner's residence, which was not to the liking of PW5, mother of PW4 and the wife of the petitioner. There seems to be some quarrel between the petitioner and PW5 in this regard. Further she states that PW5's cousin brother working in Police Department, on his force and compulsion a complaint was registered. PW1 was threatened and forced to give the complaint, though she admits the signature in the complaint with regards to the material particulars. She denies the same. She says that it was obtained by the force and coercion. The entire narration in the complaint were written on compulsion. PW1 admits that she has one year old male child at Anandha Ashramam, Hosur and the petitioner is the father of the child. Since, she had not supported the prosecution she was treated as hostile. She further states that she is now aged between 18 and 19 years. Due to PW5's casting aspiration and spreading canards about her, she was forced to live with the petitioner and both of them were live-in together and she was nine months pregnant.

7.PW2 and 3 are the father and mother of the victim/PW1. Both of them were not aware of the above facts, only after the respondent calling them for enquiry they came to know that their daughter i.e. victim/PW1 was pregnant and the petitioner was the reason for the same.

8.PW4, the daughter of the petitioner and the classmate of PW1. Both of them were studying and staying together in the school hostel. During holidays victim/PW1 used to visit their house. On one such occasion, during Dasara holidays i.e. on 22.10.2015, PW5, the mother of PW4 had gone to her native to attend a marriage. PW4 her brother, sister and the petitioner were alone at home and she saw in the morning her father sleeping in the bed along with PW1. When she questioned the same, the accused/petitioner said to have stated that PW1 was suffering from fever and he had applied some balm and that is the reason PW1 was in his bed. He had also asked PW4 four or five times to bring PW1 when he visited the school and PW1 refused to meet him. One day, the accused/petitioner said to have taken all his clothes and left the home and not returned back and he did not respond to the phone calls. Thereafter, PW4 came to know that the petitioner was living with PW1. She also came to know that PW1 school fees was paid by the petitioner. She further states that PW1 had begotten a male child and the petitioner was not living with them. She further states that the marriage had taken place between the petitioner and PW1.

9.PW5, the mother of PW4 also stated about PW1 visiting their house on occasions.
<https://hcservices.ecourts.gov.in/hcservices/>

10.PW6 and 7 are the brothers of the petitioner came to know about the above fact only after the petitioner had gone with PW1.

11.PW8 to PW10 are the Doctors. PW8 and PW9 had examined the victim/PW1 on 02.06.2016 and 03.06.2016 respectively and had confirmed that the victim/PW1 was pregnant. PW10, had examined the petitioner.

12.PW11 and 12 are the Village Administrative Officers, who are witnesses to the observation mahazar and rough sketch.

13.PW13 and 17 are the witnesses for the arrest and confession and have not supported the prosecution case.

14.PW14 is the Headmaster, who had produced the age and educational particulars of the victim/PW1, stated that the victim/PW1 was studying in class 11 and she was belongs to Scheduled Caste Adi Dravida Community.

15.PW15 is the Additional Tahsildar, who had issued community certificate of the petitioner stating that the petitioner belongs to MBC Vanniyar Community.

16.PW16 is the Tahsildar, who had issued Scheduled Caste community Certificate to the victim/PW1.

17.PW18 and 19 are the Investigating Officers, who had registered the complaint, taken up investigation and filed the charge sheet respectively.

18.PW20 is the Judicial Magistrate, who had recorded the 164 statement of the victim/PW1 on 08.06.2016.

19.The learned counsel for the petitioner submits that in this case PW1 to PW3 have not stated that the petitioner had any forcible sexual relationship with the victim/PW1. Further PW1 states that during 2017, her age was between 18 and 19 years. PW2 and 3 have not spoken anything with regard to the petitioner, except that they were informed by the police about the petitioner. PW4 to PW7 came to know about the incident subsequently. He further submits that the Lower Court had convicted the petitioner only on the evidence of PW8 to PW10 i.e. the Doctors and the Investigating Officers.

20.The learned counsel for the petitioner further submitted that the Trial Court had placed heavy reliance on Ex.P20, the relevant portion is extracted as "I am of opinion that though the forensic report analysis in negative for spermatozoa (SLM/BIOL/308/16) dated 16.06.2016 the possibility of penetrative sexual cannot be ruled out". It is pertinent to note that Ex.P20 has been marked through the Investigating Officer is a procedure not known to law and it is of no evidential value, this document lacks prudence and evidentiary value. Further he submitted that no DNA test have been conducted in the above case.

21. Further stated that the witnesses to the arrest and confession have not supported the case of the prosecution and the entire case is a stage mannered at the instance of his estranged wife PW5 and her brother who is working in the Police Department. PW1 had categorically stated that she had been forced and compelled by the police. The contents of the complaint had been written at the instance of the police. It is submitted that due to PW5's casting aspiration spreading canards creating a piquant situation. PW1 had voluntarily taken shelter of the petitioner and she was living together even after the initiation of the above case. PW2 and 3 does not speak anything against the petitioner.

22. It is to be seen that PW1 had appeared before this Court and it is brought to the notice of this Court she is not allowed to enter Anantha Home, Hosur to see her child. During enquiry she had stated that she is now presently living in Bangalore doing daily house hold jobs. Previously she was taken care by the petitioner properly and they were living together. After the petitioner's confinement she and the infant have been left at lurch. Further stated that the male child born to her during her stay at Anantha Ashram on 03.07.2016 was not shown to her. Whenever she approached the home she was chased away. It is found from the affidavit filed by the Director of Anantha Ashram that the male child born to the victim/PW1 was given adoption to one Tmt. Sabiha Sultana of Chennai, by executing Free Adoption Foster Care Agreement dated 22.03.2018. and thereafter, the said Trust Filed a petition in A.O.P.No.40 of 2018 before the Principal District Court, Krishnagiri seeking permission to give adoption of the child to the prospective parents, in full charge, and the Principal District Court, Krishnagiri vide order dated 13.08.2018 had confirmed the adoption of the child. This shocking fact was made known to her now only and she was advised and given liberty to work out her remedy in accordance with law, in respect of the male child born. She is now left with no one, the petitioner would be the person who would take care of herself and the infant. She prayed for the release of the petitioner.

23. The learned counsel for the petitioner further submitted that the medical evidence is not conclusive. Further the victim and the other witnesses have not supported the prosecution case. The Lower Court placing heavy reliance on Ex.P20, which is a questionable documents. There is DNA test conducted in this case. Further in view of PW1 and the Petitioner were living together, PW1 attaining majority and willing to live with the petitioner and further continuation of the above case would become irrational.

24. The learned Government Advocate objected the bail and submitted that the victim/PW1 belongs to Scheduled Caste community and of tender age being the class mate of the petitioner's daughter forcible relationship had been carried on by the petitioner. Despite PW1 to 3 have not supported the prosecution case completely, the medical evidence and other documents and evidence official witnesses are cogent. The subsequent development may not be a consideration

25. Considering the rival submission, perusal of documents and records the petitioner period of inclination, further on the submission made by the victim, this Court finds that there are arguable points in the case. In view of the above, sentence is suspended, the petitioner is released on bail on his execution of a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties for a likesum each to the satisfaction of the Learned (*) **the Sessions Judge, Fast Track Mahila Court Judge, Krishnagiri**. The petitioner is also directed to appear on the first working day of every English calendar month before the Learned (*) **the Sessions Judge, Fast Track Mahila Court Judge, Krishnagiri** without fail, until further orders.

-sd/-
11/06/2019

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.

[*] Amended as per order of this court dated 08.07.2019 made in Crl.M.P.NO.9027/2019 in Crl.A.No.882/2018.

TO

(*) **THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
KRISHNAGIRI.**

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

3 THE PRINCIPAL DISTRICT JUDGE
KRISHNAGIRI

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DENKANIKOTTAI, KRISHNAGIRI.

7 THE SESSIONS JUDGE
FAST TRACK MAHILA COURT,
KRISHNAGIRI

7 THE CHILD WELFARE COMMITTEE /
DISTRICT CHILD PROTECTION OFFICER,
LONDENPET,
KRISHNAGIRI 635 002

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

Order

in
CRL MP.17229/2018

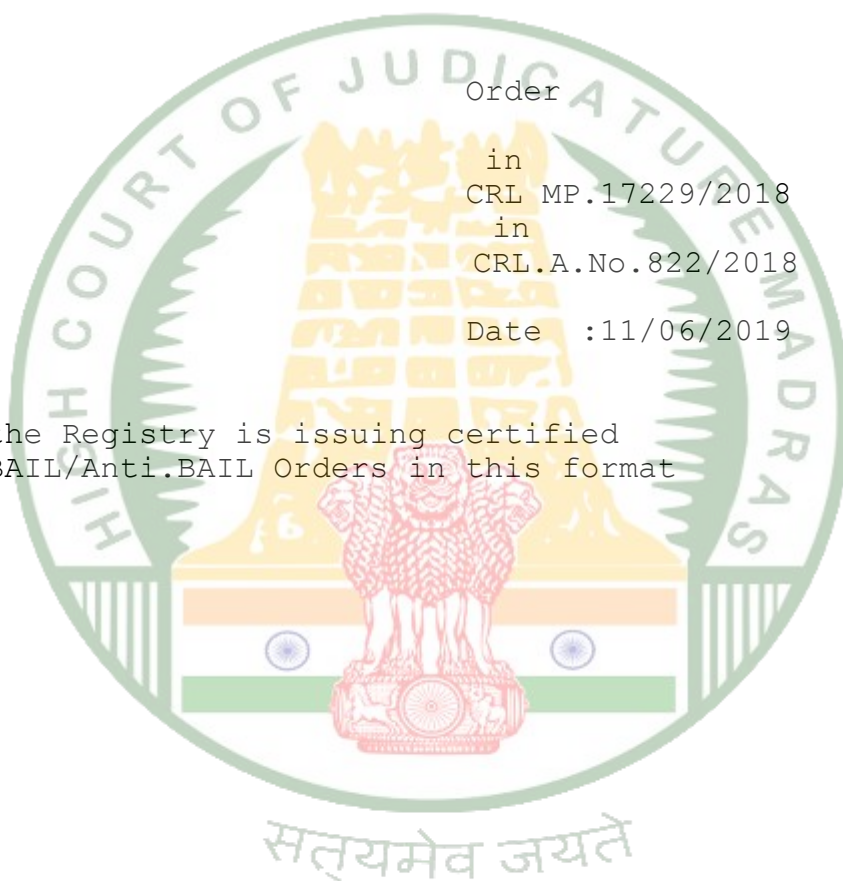
in
CRL.A.No.822/2018

Date :11/06/2019

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