



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Twenty Fourth day of April Two Thousand Nineteen

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PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.155 of 2019

IN

CRL A(MD) No.545 of 2018

J.VIJAYAKUMAR

... APPELLANT / SOLE ACCUSED

Vs

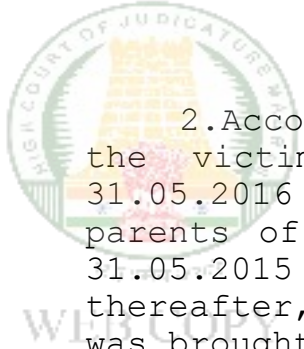
THE STATE REP.BY
THE INSPECTOR OF POLICE,
MAYANOR POLICE STATION, IN-CHARGE
LALAPETTAI POLICE STATION, KARUR
(CRIME NO.162/2016)

... RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Judgement dated 27/10/2017 passed in Special S.C.No.6/2016 on the file of the Learned Additional Sessions Judge, Karur and enlarge the petitioner on bail pending disposal of the above Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.E.SOMASUNDARAM, Advocate for the petitioner and of Mr.A.ROBINSON, Government Advocate (Crl side) for the Respondents the court made the following order:-

This Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner by the learned Additional District and Sessions Judge, Karur, in Spl.S.C No.6 of 2016, dated 27.10.2017 sentencing the petitioner to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a one month year under Section 366 IPC and 10 years rigorous imprisonment alone with fine of Rs.1,000/- and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of one month under Section 6 of POCSO Act and ordered the sentences to run concurrently.



2. According to the prosecution, on 31.05.2016, the accused took the victim to Nagapattinam and penetrated her 2 days I.e., 31.05.2016 and 01.06.2016 and based on the complaint made by the parents of the victim, the respondent police registered a case on 31.05.2015 in Crime No.162 of 2016 as Girl Missing case and thereafter, on 08.06.2016 the accused was arrested and the victim was brought to the police station.

3. The learned counsel for the petitioner submitted that the conviction of the petitioner is solely on the basis of the evidence of the parents of the victim girl and other witnesses were not supporting the case of the prosecution and the medical evidence of PW8 and PW9 is violation of the medical jurisprudence and and that the petitioner is in incarceration for more than 2-1/2 years and it is further stated that the petitioner is having reasonable ground for reconsideration of the judgment of the trial court and prays for suspension of sentence till the appeal is disposed of. The learned counsel for the petitioner also submitted the order of this court made in ***Crl.MP(MD)No.9749 of 2017 in Crl.A(MD)No.424 of 2017 (Vellaichamy Vs. State), dated 26.09.2018.***

4. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that the petitioner is 22 years old man and the victim is only 12 years old and it is stated by PW8 Doctor who examined the victim girl that PW13 victim girl has sexually assaulted and the evidence of Doctor, corroborated with the evidence of the victim. It is submitted that there are enough materials available on record against the petitioner/accused and the trial court has rightly convicted the petitioner and prays for dismissal of this petition.

5. This court has carefully considered the rival contentions put forward on either side and also perused the materials available on record.

6. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this appeal and further the appeal is not likely to be taken up for final hearing in the near future and the petitioner has been in incarceration for more than 2-1/2 years and also in similar circumstances, this court has passed an order in Crl.MP(MD)No.9749 of 2017 in Crl.A(MD)No.424 of 2017, dated 26.09.2018, this court deem it appropriate to suspend the substantive portion of sentence imposed on the petitioner.

7. Accordingly, this petition is **allowed** and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he executes 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 Additional District and Sessions Judge, Karur,



on further condition that the petitioner shall appear before the said court daily twice I.e., on 10.30 am and 05.00 pm, pending appeal.

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sd/-
24/04/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
KARUR.
- 2 THE INSPECTOR OF POLICE
MAYANOR POLICE STATION,
IN-CHARGE LALAPETTAI POLICE STATION,
KARUR.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY.
- 4 ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to MR.E.SOMASUNDARAM Advocate SR.No.7805

PS/VR/SAR-2/02.05.2019/2P/6C

ORDER
IN
CRL MP (MD) No.155 of 2019
IN
CRL A (MD) No.545 of 2018
Date :24/04/2019