



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Eleventh day of July Two Thousand Nineteen
PRESENT

WEB COPY

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.4719 of 2019

IN

CRL A(MD) No.244 of 2019

NATARAJ,

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
BODI, THENI DISTRICT.
CRIME NO. 16/2017

... RESPONDENT/RESPONDENT

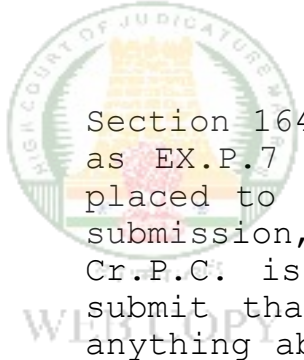
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by suspending the sentence dated 20/11/2018 imposed in SC.No.48/2017 on the file of the Fast Track Mahila Court, Theni pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr. R.NIRESHKUMAR, Advocate for the petitioner and of MR.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of this Court was made by **M. SATHYANARAYANAN, J**)

The petitioner/appellant is arrayed as accused in Special S.C.No.48 of 2017 on the file of the Mahila Fast Track Court, Theni and the said Court vide impugned judgment dated 20.11.2018, has found him not guilty for the offence under Section 6 of Prevention of Children from Sexual Offences Act, 2012 and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- with default sentence of one year rigorous imprisonment. The petitioner, challenging the legality of the said conviction and sentence, preferred the present appeal and pending appeal, filed the present petition seeking suspension of the substantive sentence of imprisonment.

2.Mr.R.Niresh Kumar, learned counsel appearing for the petitioner/appellant has drawn the attention of this Court to the judgment of the trial Court and would submit that the victim girl is aged about 3 years and she was not examined and her statement under



Section 164 Cr.P.C. given to P.W.15 - Judicial Magistrate was marked as EX.P.7 and except Ex.P.7 no other material whatsoever has been placed to connect the accused with the crime. As regards the legal submission, he would submit the statement recorded under Section 164 Cr.P.C. is not a substantive piece of evidence. He would further submit that P.W.13, who examined the victim girl, did not speak anything about the sexual assault and the framing of charge for the commission of offence under Section 6 of Prevention of Children from Sexual Offences Act, 2012 as well as the conviction made thereunder is *per se* un-sustainable in law and since the petitioner is having a bright chance of success in this appeal, prays for suspension of the substantive sentences of imprisonment.

3.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State has drawn the attention of this Court to the testimonies of P.Ws.1 and 2, parents of the victim girl, and would submit that immediately after the sexual assault the victim girl made a complaint to her parents and the testimonies of P.Ws.1 and 2 in that regard corroborate each other and even in the cross-examination of P.W.1 a suggestion was made as if the accused did not run from the place of occurrence and that evidences the fact that it was the appellant/accused alone, who has committed such a heinous crime and the points urged by the learned counsel appearing for the petitioner can be appreciated only at the time of final disposal and hence, prays for dismissal of this petition.

4.This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

5.A perusal of the evidence of P.Ws.1 and 2, parents of the victim girl, would disclose that the accused was seen with the victim girl and she immediately made a complaint as to the sexual assault on the part of the petitioner/appellant/accused. The points raised by the learned counsel for the petitioner/appellant, as rightly pointed out by the learned Additional Public Prosecutor, can be appreciated only at the time of final disposal of the appeal. Therefore, this criminal miscellaneous petition is dismissed.

6.At this juncture, the learned counsel appearing for the petitioner would submit that the petitioner is undergoing incarceration for 7 months and since he is having a bright chance of success, prays for expediting final disposal of the appeal and this Court is inclined to consider that request. Accordingly, the Registry is directed to prepare the typed sets of papers and list the appeal for final hearing on 22.08.2019.

sd/-

11/07/2019

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TO

1 THE JUDGE,
FAST TRACK MAHILA COURT,
THENI.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
BODI, THENI DISTRICT.

3 THE SUPERINTENDENT ,
CENTRAL PRISON, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.4719 of 2019
IN
CRL A (MD) No.244 of 2019
Date :11/07/2019

sj
AE/JC/SAR-II (18.07.2019) 3P 6C