



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

Thursday, the Fourteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.9537 of 2018

IN

CRL A(MD) No.96 of 2016

BALUSAMY

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
PASUPATHIPALAYAM POLICE STATION,
KARUR. IN
(CRIME NO. 591 OF 2014)

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of Imprisonment imposed by the learned Sessions Judge Mahalir Fast Track Court, Karur in Spl.SC.No. 10 of 2015 by the Judgment dated 04.12.2015 and enlarge the petitioner Appellant on bail, pending disposal of the above said Criminal Appeal.

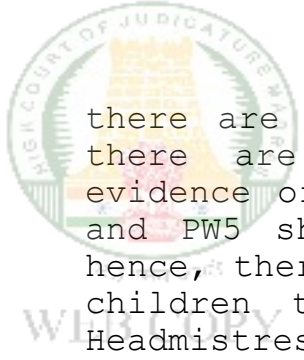
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.ANANDAN for MR.S.DEENADHAYALAN, Advocate for the petitioner and of MR.A.ROBINSON, Government Advocate(Crl. Side) on behalf of the Respondent, the court made the following order:-

This Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner by the Sessions Judge-Mahalir Fast Track Court, Karur, in Spl.S.C.No.10 of 2015, dated 04.12.2015, pending disposal of the criminal appeal.

2.The learned counsel for the petitioner submitted that petitioner was convicted by the trial Court and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment under Section 5(1)(m) of the POCSO Act (2 counts) and sentenced him to undergo one year simple imprisonment and to pay Rs.500/-, in default to undergo one month simple imprisonment under Section 506 (i) of IPC.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel for the petitioner further submitted that



there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses and that the evidence of PW4 and PW5 shows that the house of Kathayee was always locked and hence, there is no possibility for the petitioner to have taken the children to her house and that the defence had examined the Headmistress and Class Teacher as DW1 and DW2 and marked the attendance register for 18.09.2014, which shows that the children attended the school. And that the mother of the children did not inform the occurrence to anybody, but had gone straight to the police and preferred the complaint. It is further submitted that PW12 Doctor has deposed that there is no physical injuries on the body of the victims and. It is also submitted that the petitioner is in jail since 04.12.2015 and he is the only bread winner of his family and that there are arguable points in the main appeal. In view of the above circumstances, the petitioner seeks the relief of suspension of sentence till the disposal of the appeal.

4.It is submitted by the learned Government Advocate (Criminal side) that there are enough materials available on record against the petitioner as per the evidence adduced by the prosecution and there is no infirmity in the prosecution case and prays for dismissal of this petition.

5.This court has carefully considered the rival contentions put forward by their 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 the petitioner is in jail since 04.12.2015 and there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

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 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 Judicial Magistrate No.1, Karur and on further condition that the petitioner shall appear before the said court daily twice I.e., at 10.30 am and 5.00 pm pending appeal.

sd/-

14/03/2019

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TO

1. THE SESSIONS JUDGE,
MAHALIR FAST TRACK COURT,
KARUR.

2. THE JUDICIAL MAGISTRATE NO. I,
KARUR.

3. DO THRO' THE CHIEF JUDICIAL MAGISTRATE
KARUR DISTRICT.

4. THE INSPECTOR OF POLICE,
PASUPATHIPALAYAM POLICE STATION,
KARUR.

5. THE SUPERINTENDENT
CENTRAL PRISON,
TIRUCHIRAPPALLI.

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

+1cc to MR. S. DEENADHAYALAN, Advocate in SR.No. 4903

ORDER

IN

CRL MP (MD) No. 9537 of 2018

IN

CRL A (MD) No. 96 of 2016

Date : 14/03/2019

AE/PN/SAR-III/18.03.2019/3P/8C