

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Fourth day of January Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.744 of 2020

IN CRL.A.NO.261 OF 2018

KUMAR @ KUMARESAN

[PETITIONER]

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
ERODE NORTH POLICE STATION,
ERODE DISTRICT.
CR.NO.649 OF 2016.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.261/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in SC No.14/2017 by a Judgment dated 21.08.2017 on the file of Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Erode, Erode District and enlarge the petitioner on bail pending the above criminal Appeal No.261/2018 [CRL.MP.NO.744/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.261/2018 on the file of the High Court and upon hearing the arguments of M/S.P.K.GANESH, Advocate for the petitioner and of MRS.M.PRABHAVATHI ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by **R. Subbiah, J**)

The petitioner is the sole accused in Special Sessions Case No. 14 of 2017 on the file of the learned Additional Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Erode, Erode District. He stood charged for the offences punishable under Sections 367, 346, 324, 377 of the Indian Penal Code and Section 6 of Protection of Children from Sexual Offences (in short POSCO) Act. After trial, by Judgment dated 21.08.2017, the trial court found the accused guilty of the offences punishable under Sections 367, 346 and 324 of the Indian Penal Code and Section 6 of POSCO Act and sentenced him to undergo rigorous imprisonment for ten years for the offence

under Section 367 of IPC with fine of Rs.1,000/-, in default to undergo 2 years simple imprisonment; to undergo rigorous imprisonment for two years for the offence under Section 346; to undergo three years of rigorous imprisonment for the offence under Section 324 of IPC with fine of Rs.1,000/- in default to undergo simple imprisonment for six months and to undergo life imprisonment for the offence under Section 6 of POSCO Act together with fine of Rs.1,000/- in default to undergo six months simple imprisonment. However, the sentences were ordered to run concurrently. Assailing the Judgment dated 21.08.2017 passed by the court below, the present Criminal Appeal has been filed.

2. Pending Criminal Appeal, the petitioner has filed the above Petition for suspension of substantial sentence of imprisonment.

3. The case of the prosecution as could be inferred from the materials made available is that on 18.11.2016, the minor victim Jishnu, male aged 12 years, was returning from his school to go home. When the victim was waiting in the Erode Bus Stand for the mini bus to go to his home, the accused came there in a Motor Cycle, which he had allegedly stolen from a wine shop situated in Veppadai, Namakkal District on 16.11.2016. The accused interacted with the victim as to why he is waiting there. When the victim informed the accused that he is waiting for the mini bus to go to his home situated at Manickampalayam, Ponni Nagar, the accused made a false representation to drop him at his home and asked him to get into his motor cycle. Believing such representation to be true, the victim accompanied the accused in his motor cycle. However, the accused taken the victim to his house at No.213, Guru Bakery Lane, Ottamethai, Pallipalayam, Namakkal District where he confined the victim unlawfully for a week. During such confinement, the accused made the victim to perform obscene acts of oral sex with him to give vent to his carnal desires. In other words, the accused compelled the victim to indulge in acts of fellatio much to his chagrin. When the victim refused, the accused alleged to have beaten him with iron rod. It is further charged that out of threat and coercion, the accused had penetrative sexual intercourse with the victim in his anal and caused bodily injury to him. In this context, the father of the victim gave a complaint based on which prosecution came to be launched against the accused.

4. The trial court, on analysing the oral and documentary evidence produced before it, convicted and sentenced the petitioner/accused, as hereinbefore mentioned.

5. The learned counsel appearing for the petitioner would contend that there are several inconsistencies in the case of the prosecution. The learned counsel for the petitioner invited our attention to the deposition of PW1, father of the victim, who has stated that his son did not go to the school at all on 18.11.2016. PW1 also deposed that his son is addicted to drugs and he is associated with bad friends. PW1 further admitted that he had given the complaint only on 24.11.2016, one week after the alleged occurrence on 18.11.2016. The learned counsel for the petitioner

also invited the attention of this Court to the Accident Register issued by the Assistant Surgeon, Government Head Quarters Hospital, Erode, marked as Ex.P10 in which it was clearly stated that there was no injuries seen in the anal region of the victim. Therefore, pointing out the above deposition of PW1 and Ex.P10, the learned counsel for the petitioner would contend that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt, however, the trial court had erroneously convicted and sentenced the accused. It is stated by the learned counsel that the petitioner has a fair chance of succeeding in the criminal appeal. Further, the petitioner/accused is undergoing incarceration for the past more than two years. Since the final hearing of the criminal appeal will take some time, the learned counsel seeks for suspension of substantial period of sentence.

6. The learned Additional Public Prosecutor vehemently opposes to grant suspension of sentence and she prayed for dismissal of this petition.

7. We have considered the rival submissions and perused the material records. Having regard to the submissions of the counsel for the petitioner with respect to inconsistencies in the deposition of the prosecution witness and the fact that the petitioner is undergoing incarceration for more than two years, we are inclined to consider the present petition for suspension of sentence pending the final disposal of the Criminal Appeal.

9. Accordingly, the substantive sentence of imprisonment imposed against the petitioner/accused by the trial court in the Judgment dated 21.08.2017 passed in S.S.C. No. 14 of 2017 on the file of the Additional Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Erode, Erode District alone is suspended and the petitioner/Accused is directed to be enlarged on bail on condition that he shall execute a bond in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Erode, Erode District and on further condition that he shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
24/01/2020

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.

TO

1 THE ADDITIONAL SESSIONS JUDGE
MAGALIR NEETHIMANDRAM[FAST TRACK MAHILA
COURT]ERODE,ERODE DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE[FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON,COIMBAOTRE

4 THE INSPECTOR OF POLICE,
ERODE NORTH POLICE STATION,
ERODE DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.P.K.GANESH Advocate on payment of necessary
charges SR.NO. 1437

Order

in
CRL MP.744/2020

IN CRL.A.NO.261 OF 2018

Date :24/01/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 27/01/2020

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