

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.1490 of 2020

in Crl.A.No.74 of 2020

Jeeva Bharathi @ Jeeva

... Petitioner

Versus

The State rep. by
The Inspector of Police,
Lawspet Police Station,
Puducherry.
(Crime No.172 of 2015)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) r/w 439 of the Code of Criminal Procedure, to suspend the sentence imposed by the learned Special Judge at Puducherry in Spl.SC.No.13 of 2016 dated 06.12.2019 and enlarge the petitioner on bail pending above Criminal Appeal.

For Petitioner : Mr.Swamisubramanian

For Respondent : Mr.Bharatha Chakaravarthy
Public Prosecutor

ORDER

The petitioner/accused in S.C.No.13 of 2016 was charged and facing trial for the offence under Sections 4 and 6 of POSCO Act. On completion of trial, the Trial Court by its judgment dated 06.12.2019, found the petitioner guilty and convicted for the offence under Section 6 of POSCO Act and sentenced him to undergo 10 years Rigorous Imprisonment and also fine of Rs.2,000/- in default to undergo three month Rigorous Imprisonment. Against which the petitioner filed an appeal before this Court in Crl.A.No.74 of 2020, along with the petition for suspension of sentence.

2. The case of the prosecution is that on 18.11.2015, P.W.1/the victim girl was brought to the office of Child Welfare Committee along with her bady, where P.W.15/Dr.Vidya Ramkumar, was Chairperson. On perusal of the documents, P.W.15 came to know that the age of the victim girl is 17 years. On enquiry, it was found that the victim girl was subjected to penetrative sexual assault by the petitioner. On the same day, P.W.15 obtained a complaint from the victim girl and

forwarded the same to the respondent Police on 22.12.2015. The said complaint is marked as Ex.P14. P.W.2/Mother of the victim requested P.W.15 to take action after the adoption of baby and hence there was a delay in forwarding the complaint to the respondent Police. P.W.17/Sub-Inspector of Police registered a case in Crime No.172 of 2015 under Section 6 of the POSCO Act and 376 IPC and the FIR is marked as Ex.P15. During the course of investigation, the victim girl was examined at Santhosh Home in the presence of P.W.5/Samundeeswari and the same was videographed by P.W.14/Photographer. P.W.1, the victim girl informed that the petitioner is her distant relative. Prior to 3 years, she had sexual intercourse with the petitioner with consent and she became pregnant. Thereafter, she went to Government Hospital, Puducherry along with her mother and obtained some medicines. Later, when she went to Cluny Hospital for check up her pregnancy was confirmed. On 17.11.2015, a female child was born to P.W.1. Thereafter, they went to the office of Child Welfare Committee for giving the child for adoption, there it was found that P.W.1 was minor, hence, a complaint was obtained from P.W.1 and the same was forwarded to the respondent Police. During the course of investigation, P.W.11/Social Welfare Officer, P.W.5/Incharge of Santhosh Home, P.W.7/Doctor from Cluny Hospital, P.W.9 and P.W.10/Doctors from Government Hospital were examined. On completion of investigation charge sheet filed. During trial P.W.1 to P.W.19 were examined, Exs.P1 to Ex.P19 and M.O.1 to M.O.6 were marked on the prosecution side. Ex.D1 and Ex.D2 were marked on the defence side. The Trial Court considering the evidence and materials produced, convicted the petitioner as stated above.

3. The learned counsel for the petitioner submitted that, in this case P.W.1 is the victim, P.W.2 is the Mother of the victim. All the other witnesses are the official witnesses. Both P.W.1 and P.W.2 have not supported the case of the prosecution and they were treated hostile. P.W.1 and P.W.2 assert that P.W.1 was major at the time of the occurrence. To prove the same, they produced Exs.D1 and D2. P.W.1 was a Nursing School Student, who was residing in the petitioner's house for sometime, during that stay P.W.1 and the petitioner had physical relationship. P.W.1 assert that the act of physical relationship was volunteer and it was on her own will. P.W.2/Mother of the victim also deposed the same. P.W.7/Doctor who attended delivery of P.W.1 states that during the delivery the victim age was 19 years as stated by PW1 and as per Ex.D1. Based on Ex.D1, the victim was admitted in the hospital and delivery was attended. Further, from the evidence it is seen that there was no contra evidence against the petitioner proved in the manner known to law. When P.W.1 and P.W.2 went to the office of the Child Welfare Committee to give the child for adoption, P.W.15, on enquiry found that P.W.1 was minor aged about 17 years. Hence, P.W.15 obtained a complaint from P.W.1 and forwarded the same to the respondent Police. There is a delay in forwarding the complaint/Ex.P14 to the respondent Police.

4. He further submitted that though P.W.1 admitted the signature found in Ex.P14/ complaint, she categorically states that she merely signed without reading and knowing its contents on the signature was obtained for the purpose of adoption. The particulars found in the complaint are disowned by P.W.1. P.W.1 and P.W.2 states that they were pressurised and not knowingly gave 164 statement before the Magistrate, which were marked as Ex.P2 and Ex.P3 and disowned the same. In this case, admittedly, the Magistrate who recorded 164 statement has not been examined as witness. Hence, Ex.P2 and Ex.P3 cannot be looked into. P.W.2, Mother of the victim categorically states that P.W.1 was admitted in the school belatedly since she was suffering from infirmity and her correct date of birth is 01.03.1996. Since it was a late admission, the school authority/P.W.13 recorded the age of the victim as 01.03.1999. P.W.10 is the Doctor who examined P.W.1, stated that as per radiological age assessment, the victim's age would be between 16 years to 18 years. Thus, the petitioner submitted that as per Exs.D1 and D2 the age of the victim was 19 years on the date of occurrence and she was major. The age found in Ex.P13 and Ex.P17 have been recorded by the school authority on their own. P.W.2, Mother of the victim assert the same and it is also found that P.W.1 was of over age when she got admitted in first standard and there is some confusion and contradiction in her age at various places in various documents.

5. The learned counsel further submitted that the Trial Court failed to look into these discrepancy and evidence of P.W.10, Ex.D1 and Ex.D2 and had wrongly convicted the petitioner. P.W.1 even on this day residing with the petitioner's family, who are now facing great financial difficulty. The petitioner is the only earning member in his family and unless he comes out the survival of the petitioner's family as well as P.W.1 would become questionable one. Hence, seeks bail for the petitioner.

6. The learned Additional Public Prosecutor submitted that, in this case P.W.1 had given birth to the female baby and gave the baby for adoption to the office of Child Welfare Committee. P.W.15/The Chairperson of the Child Welfare Committee, on enquiry found that P.W.1 was minor and lodged a complaint to P.W.17. P.W.17, registered a case, conducted investigation thereafter the case was handed over to P.W.18/Investigating Officer, who took up the further investigation, examined P.W.1 and P.W.2 and recorded their statement. P.W.1 and P.W.2 have also given 164 statement before the Magistrate and in the statement they have categorically stated that the victim was minor and she was subjected to penetrative sexual assault by the petitioner. Later P.W.1 and P.W.2 become complacent with the petitioner and turned hostile. Both P.W.1 and P.W.2 have not supported the case. P.W.5, P.W.8 and P.W.15 are the officials from the Social Welfare Department. P.W.6 is the person from the Santhosh Home where P.W.1 was made to stay. P.W.7 is the Doctor who attended the delivery of the P.W.1. P.W.13 is the School Head Master, who produced transfer certificate, in which the date of birth of the victim was found as 01.03.1999. Thus, the victim being minor had a physical relationship with the petitioner. The paternity of the child

is not disputed and the prosecution had proved the case against the petitioner by cogent evidence. The Trial Court considering the evidence and materials produced had rightly convicted the petitioner. Hence, opposed for granting bail to the petitioner.

7. Considering the rival submissions and the materials, it is seen that in this case P.W.1/the victim and P.W.2/Mother of the victim had not supported the case of the prosecution. Except P.W.1 and P.W.2, other witnesses are official witnesses. In this case, the relationship between P.W.1 and the petitioner and the paternity of the child is not in dispute. According to P.W.1 and P.W.2, the victim was major and her date of birth is 01.03.1996. P.W.10/Doctor stated that as per radiological report, the victim's age would be 16 to 18 years and thus from the evidence of P.W.1 and P.W.2, Ex.D1 and Ex.D2 and the radiological report, the victim is major. The age shown in Exs.P1, P12 and P13 are disputed by P.W.1 and P.W.2 and has become questionable one. P.W.2 has given an explanation that since P.W.1 was joined the School with delay due to health condition her date of birth was recorded as 01.03.1999. The explanation of the Mother seems to be probable and she would be the right person to give explanation. PW2, the Mother being uneducated her explanation can be accepted. There is no contra evidence to these facts, it is for the prosecution to prove the case against the petitioner beyond all reasonable doubt, since the evidence of PW1 and PW2 had been dislodged by the prosecution. Admittedly, in this case Magistrate who recorded 164 Cr.P.C., statement was not examined. Hence Exs.P2 and P3 have no relevance. P.W.7/Doctor states that the victim was major during her delivery. The victim is staying with the petitioner's family is not disputed. Finding several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioner and further, the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the Special Judge at Puducherry, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of every English Calendar Month at 10.30 a.m., till the disposal of the appeal.

-sd/-

06/11/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

TO

1 THE SPECIAL JUDGE
AT PUDUCHERRY.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY.

3 THE PUBLIC PROSECUTOR
PUDUCHERRY

4 THE INPSECTOR OF POLICE,
LAWSPET POLICE STATION,
PUDUCHERRY.

+1 C.C. to SWAMISUBRAMANIAN Advocate on payment of necessary
charges SR.No.7364

Order

in
CRL MP.1490/2020

in
CRL.A.74/2020

Date :06/11/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cs 11/11/2020

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