

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.3019 of 2020

IN CRL.A.NO.161 OF 2020

M.RAJENDREN

[PETITIONER]

vs

THE STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (EAST)
RAMANATHAPURAM, COIMBATORE
CRIME NO. 818/2017

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.161/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence passed against the petitioner/ Appellant in SPL CC No. 40/2019 DATED 30.01.2020 by the Honble Additional Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore and enlarge petitioner on bail pending disposal of the accompanying criminal appeal.[CRL.MP.NO.3019/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.161/2020 on the file of the High Court and upon hearing the arguments of M/S. P.NAGARAJU Advocate for the petitioner and of MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This appeal has been filed by the accused against the judgment of conviction and sentence passed by the Special Court for exclusive trial of cases under POCSO Act, Coimbatore in SPL.C.C.No.40 of 2019 dated 27.01.2020.

2. The case of the prosecution is that on 20.07.2017 at about 20.00 hours, when the victim girl aged about 9 years went to MJ Grocery shop which is situated at Ammankulam, Rajeev Nagar, Ramanathapuram, Coimbatore to buy milk, the grocery shop keeper went inside the shop to take the milk. At that time, the accused came nearer to the victim girl with an intention of committing sexual assault and touched the victims girl's private part. Further, it was alleged that even on the previous occasion also, the accused has committed the same kind of offence and hence, the accused has to be punished under Section 9(1) and 9(m) r/w Section 10 of the Protection

of Children from Sexual Offences Act 2012 (herein after referred it as POCSO ACT).

3. The trial Court found the accused guilty under Section 7 r/w 8 of the POCSO Act and sentenced him to undergo imprisonment for three years and imposed a fine of Rs.2,000/- in default to undergo three months simple imprisonment. She also ordered that the period already undergone to be set off under Section 428 of Cr.P.C. As against the said judgment of conviction and sentence, the accused has filed the present appeal.

4. The learned counsel for the appellant/accused has submitted that the victim girl has not identified the accused. He further submitted that the victim girl has not stated that the accused person has touched her private part. On the contrary, she has stated one old man touched her buttocks. He further submitted that the victim girl has not subjected to medical examination. Further, the Inspector of Police while examining herself as P.W.9 has deposed that she submitted a requisition to record the statement under 164 of Cr.P.C with the victim girl, but, the parents of the said victim girl have sent a letter to the Judicial Magistrate stating that they are not willing to give statement under Section 164 of Cr.P.C and hence, the statement under Section 164 of Cr.P.C was not recorded from the victim girl and also from her parents. He further submitted that eventhough there is no material to link the accused with the aforesaid crime, the trial court has convicted the accused. He further submitted that the appellant/accused was remanded on 27.01.2020 itself and from that date onwards he is in custody. He further submitted that the appellant/accused has paid a fine before the trial court and therefore he prayed to suspend the sentence and release the appellant/accused on bail till the disposal of the appeal.

5. Per contra, the learned Government Advocate (Crl.Side) has submitted that the trial court after taking into consideration of the materials placed before it has rightly found the accused guilty and sentenced him and hence, he opposed to suspend the sentence.

6. A perusal of the evidence of the victim girl shows that she has not identified the accused before the trial court. She has deposed that one old man touched her buttocks, but, the case of the prosecution is that the accused has touched the private part of the victim girl and on the previous occasions also, the accused has committed the same kind of offence. Further, the evidence of P.W.1 and P.W.9 shows that P.W.1 has sent a letter to the Judicial Magistrate stating that they are not willing to give statement under Section 164 of Cr.P.C and hence, the statement under Section 164 of Cr.P.C was not recorded from the victim girl. Further, the victim girl was not sent to medical examination also.

7. Taking into consideration of the aforesaid facts, this court is inclined to suspend the sentence awarded by the trial court and directing the appellant to release on bail with the following conditions;-

(i) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties for like sum each, and that

(ii) The petitioner shall appear before the trial on the 1st working day of every month until disposal of Criminal Revision Petition.

8. Call for records from both the courts below.

-sd/-

06/03/2020

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
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, COIMBATORE

2 THE SESSIONS JUDGE, SPECIAL
COURT FOR POCSO ACT, COIMBATORE

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT
CENTRAL PRISON, COIMBATORE

5 THE STATE REP BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (EAST)
RAMANATHAPURAM, COIMBATORE

+1 C.C. to M/S. P.NAGARAJU Advocate on payment of necessary charges SR.NO. 4501

Order

in

CRL MP.3019/2020

IN CRL.A.NO.161 OF 2020

Date :06/03/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 10/03/2020