

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2020

PRONOUNCED ON : 18.08.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

CrI.M.P.No.4443 of 2020

in CrI.A.No.275 of 2020

P.Chinnasamy

..

Petitioner

Vs.

State represented by
The Inspector of Police,
All women Police Station East,
Coimbatore District.
(Crime No.30 of 2014)

..

Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C. to suspend the sentence imposed on the petitioner by judgment and order dated 22.06.2016 passed in Special C.C.No.7 of 2015 on the file of the Sessions Court (Magalir Neethi Mandram), Coimbatore and to enlarge him on bail, pending disposal of the appeal.

For Petitioner : Mr.M.Saravanakumar

For Respondent : Mr.K.Madhan
Government Advocate
(CrI.Side)

ORDER

This case is taken up through video conferencing.

2. This petition is filed seeking to suspend the sentence imposed on the petitioner, by judgment and order 22.06.2016 passed in Special C.C.No.7 of 2015 on the file of the Sessions Court (Magalir Neethi Mandram), Coimbatore and to enlarge him on bail, pending disposal of the appeal.

3. The petitioner, who was an accused in Special C.C.No.7 of 2015 before the Sessions Court (Magalir Neethi Mandram), Coimbatore, was convicted of the offences under Section 5(m) & 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act") and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment.

4. Challenging the above conviction and sentence, the petitioner has filed CrI.A.No.275 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

5. Heard Mr.M.Saravanakumar, learned counsel for the petitioner and Mrs.K.Madhan, learned Government Advocate (CrI.Side) for the respondent/State.

6. The learned counsel for the petitioner submitted that "X" (PW2) (name not disclosed for the sake of anonymity) has stated in the cross-examination that she was tutored by her parents (Pws.1 & 3) to depose before the Court. It is his further submission that since there was enmity between the parents of "X" (PW2) and the petitioner, the case has been foisted. He also submitted that the trial Court had failed to appreciate the evidence of DW1 in the proper perspective.

7. Per contra, the learned Government Advocate (CrI.Side) refuted the submissions made by the learned counsel for the petitioner.

8. "X" (PW2) was six years old and the petitioner was sixty two years old, when the alleged incident took place on 29.07.2014. The petitioner was living two houses away from the house of "X" (PW2). While "X" (PW2) and her friends were playing near their house, the petitioner took "X" (PW2) inside his house on the promise of giving her tender coconut, locked the door from inside and sexually abused "X" (PW2). When "X" (PW2) started crying, Jothi (PW4) and Devi (PW5), who were neighbours, heard the cries and came to the house of the petitioner and found it locked from inside. They banged the door and when the petitioner opened the door, they found "X" (PW2) weeping. "X" (PW2) told them as to what all the petitioner had done.

9. "X" (PW2) was eight years old when she gave evidence before the trial Court. Under the POCSO Act, it is permissible for the Court to examine the victim child with one of its parents beside it. Of Course, the Presiding Officer will ensure that answers are given by the child and not by the parents. It is natural for the parents to say to the victim child while coming to the Court that she should depose whatever she had undergone and that cannot be considered as tutoring.

10. Be that as it may, the evidence of Jothi (PW4) and Devi (PW5) are indeed incriminating in nature.

11. As regards the evidence of DW1, the trial Court has found that DW1 is the son-in-law of the petitioner and his evidence that there was a dispute between the parents of "X" (PW2) and petitioner, on account of which, this case has been foisted on the petitioner, did lack credibility.

12. Taking into consideration the serious nature of allegations, this Court is of the view that this is not a fit case to grant bail.

For the reasons aforesaid, this Court does not find any merit in this petition and consequently, the same stands dismissed. It is made clear that whatever is stated above is only for the limited purpose of deciding this petition for suspension of sentence and bail alone and cannot be pressed into service during final hearing of the appeal.

The Registry is directed to call for the records, prepare the typed set of papers and post the main case immediately after physical hearing resumes.

-sd/-

18/08/2020

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 SESSIONS JUDGE
MAGALIR NEETHI MANDRASM (MAHILA COURT),
COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION EAST,
COIMBATORE DISTRICT.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.M.SARAVANAKUMAR Advocate on payment of necessary charges

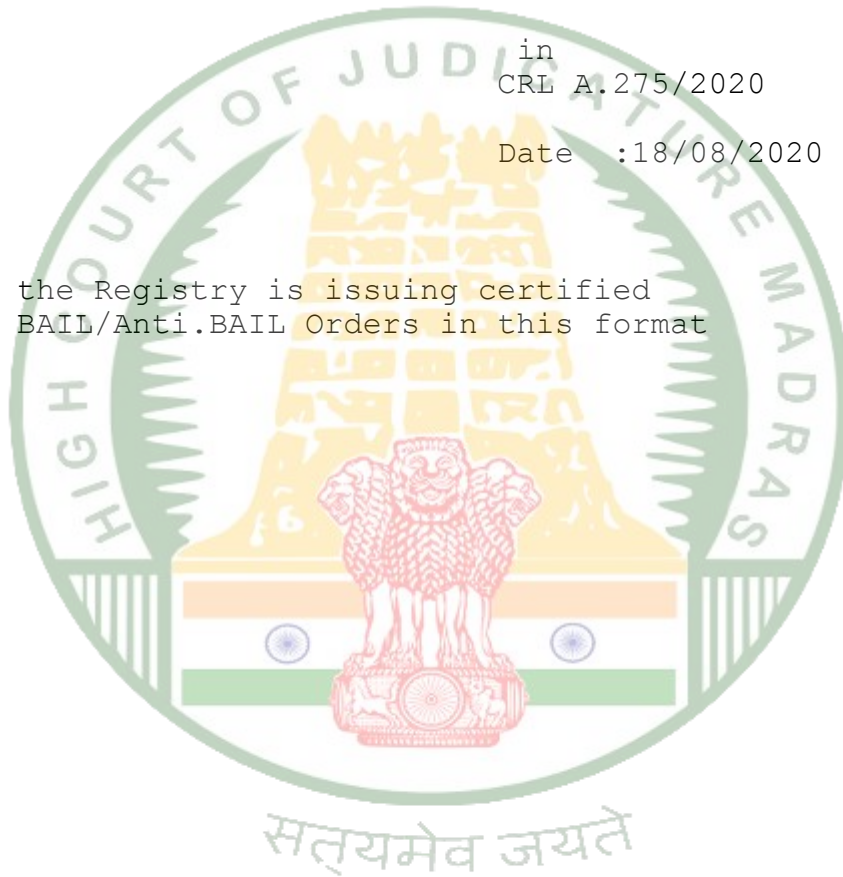
Order

in
CRL MP.4443/2020

in
CRL A.275/2020

Date :18/08/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cs 21/08/2020



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