

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Thirteenth day of October Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.5099 of 2020

IN CRL A.332/2020

ELANGO @ ELANGOVAN

[PETITIONER]

Vs

STATE BY
THE INSPECTOR OF POLICE,
IDAPADDI POLICE STATION,
SALEM DISTRICT.
IN CRIME NO.419/2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed in the judgment dated 06.12.2019 made in Spl.S.C.No.70/2015 on the file of the learned Sessions Judge, Mahila Court of Salem and release the petitioner on bail pending Criminal Appeal No.332/2020.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.B.M.SUBASH, Advocate for the petitioner, and of M/S.P.KRITIKA KAMAL Govt. Advocate (Crl. Side) on behalf of the Respondent, the court made the following order:-

The petitioner has been convicted in Spl. S.C. No.70 of 2015 by the Mahila Court, Salem on 06.12.2019 and was sentenced as under:

Provision under which convicted	Sentence
S.363 IPC	3 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment
S.366 IPC	7 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment
S.9 of the Prohibition of Child Marriage Act	2 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment
S.5(1) read with Section 6 of the POCSO Act	10 years rigorous imprisonment and fine of Rs.50,000/-, in default to undergo 6 months simple imprisonment

The aforesaid sentences were ordered to run concurrently.

2 Challenging the aforesaid conviction and sentences, the sole accused has preferred the instant criminal miscellaneous petition seeking suspension of sentence and bail.

3 Heard Mr. B.M. Subhash, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 The learned counsel for the petitioner submitted that the prosecution has failed to prove the age of the victim girl properly and that the medical evidence also does not corroborate the testimony of the victim girl. He also contended that the victim girl had come on her own volition with the accused.

5 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions.

6 This Court gave its anxious consideration to the rival submissions.

7 In **Atul Tripathi vs. State of Uttar Pradesh**¹, the Supreme Court has held that while considering an application for suspension of sentence, the Court should bear in mind the gravity of the offence, the nature of the crime, criminal antecedents of the convict and the impact on public confidence in the justice delivery system, etc.. Likewise, in **Sidhartha Vashisht vs. State (NCT of Delhi)**², the Supreme Court has held that the relief of suspension of sentence is not an automatic one and that the presumption that the accused is innocent, which is normally available for regular bail,

¹ (2014) 9 SCC 177
<https://hcservices.ecourts.gov.in/hcservices/>

² (2008) 5 SCC 230

is not available in the case of suspension of sentence and that the normal rule is jail and not bail.

8 In this case, the date of birth of the victim girl is 01.05.2001 as could be seen from the evidence of Valarmathi (P.W.10), Headmistress of the school where the victim girl was studying. The incident had taken place on 26.08.2015, on which date, the victim girl was only 14 years old. The petitioner was 27 years old on the said date. The evidence of the victim girl shows that there was penetrative sexual assault on her by the petitioner.

9 Taking into consideration the age of the victim girl and the petitioner, this is not a fit case in which suspension of sentence and bail can be granted.

In the result, this criminal miscellaneous petition is dismissed.

-sd/-

13/10/2020

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,
MAHILA COURT, SALEM.

2 THE INSPECTOR OF POLICE
IDAPADDI POLICE STATION,
SALEM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

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

Order
in
CRL MP.5099/2020
in
CRL A.332/2020
Date :13/10/2020

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