

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.MP.No.3856 of 2020
in Crl.A.No.215 of 2020

Mr. B. Kesavan

.. Petitioner

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Krishnagiri,
Krishnagiri District.

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C.,
praying to suspension the sentence imposed against the petitioner in
Spl.S.C.No.45 of 2018 passed by the Learned Sessions Judge, Fast Track Mahila
Court, Krishnagiri, Krishnagiri District dated 28.02.2020 and enlarge the
petitioner on bail pending above the criminal appeal.

For Petitioner : Mr. V. Gopinath
learned Senior Counsel
for Mr.M.P.Saravanan

For Respondent : Mr.M.Mohammed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed to suspend the sentence imposed by the Court below in Spl.S.C.No.45 of 2018 dated 28.02.2020, pending disposal of the Crl.A.No.215 of 2020.

2. The case of the prosecution is that the petitioner forceably had intercourse with the victim girl, who is a minor and thereby he has committed the offence.

3. Mr. V. Gopinath, learned Senior counsel appearing on behalf of the petitioner submitted that there are lot of discrepancies found in the findings rendered by the Trial Court. The learned Senior counsel submitted that the very incident that was taken as the basis for the present case is highly doubtful since there is an earlier complaint, which was marked as Ex.P.23 in which it is specifically stated about a long standing love affair between the petitioner and the victim girl. The learned Senior counsel submitted that this complaint was also admitted by many witnesses when they were confronted with the said document. Therefore, the learned Senior counsel submitted that the basis of the present

complaint leading to the conviction of the petitioner is highly doubtful. The learned Senior counsel further submitted that the petitioner and the victim girl are close relatives.

4. The learned Senior counsel further submitted that the age of the victim girl is under dispute. In order to substantiate his submission, the learned Senior counsel relied upon Ex.P.15 and evidence of P.W.16. The learned Senior counsel submitted that Ex.P.15 was a study certificate marked through P.W.16 and as per this document age of the victim girl was shown as 17 years. According to the evidence of P.W.16, this certificate was prepared based on the original particulars said to have been given at the time when the victim girl joined the school. The learned Senior counsel submitted that this original document was not filed before the Court and except for the evidence of P.W.16, there is nothing to substantiate the contents of Ex.P.15. The learned Senior counsel submitted that the age of the victim girl was 19 years.

5.The learned Senior counsel further submitted that the petitioner has suffered incarceration from 28.02.2020 onwards.

6. Mr.Mohammed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent police vehemently opposed this petition. The learned counsel submitted that the victim girl, who was examined as P.W.1 has categorically stated about the incident and her evidence has not been substantially discredited in the course of cross-examination. The learned counsel further submitted that the age of the victim girl has been clearly established through Ex.P.15, which was marked through P.W. 16 and this witness was the headmistress of the concerned school. The learned counsel further submitted that the evidence of P.W.1 was substantiated by the evidence of her mother P.W.3 and other witnesses, who are relatives of P.W.1.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. In the considered view of this Court, a *prima facie* case has been made out and there are arguable points in this appeal. The petitioner has already suffered incarceration for nearly four months and this Court is not in a position to take up the Criminal Appeal for final hearing in the near future. Hence, this Court

is inclined to suspend the substantive sentence imposed by the Trial Court subject to the following conditions:

9. Accordingly, the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum out of which one surety shall be a blood relative of the petitioner, before the learned Sessions Judge, Fast Track Mahila Court, Krishagiri, Krishnagiri District.

[b] the petitioner is directed to appear before the Trial Court on the 1st working day of every month until further orders.

[c] the petitioner shall not leave Tamil Nadu without the leave of this Court.

WEB COPY

18.06.2020

Index : Yes/No

Internet : Yes/No

mp/kp

Note: Upload the order on 19.06.2020

To

1. The learned Sessions Judge,
Fast Track, Mahila Court, Krishagiri,
Krishnagiri District.
2. The Inspector of Police,
All Women Police Station,
Krishnagiri, Krishnagiri District.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Jail Superintendent,
Central Jail, Vellore.

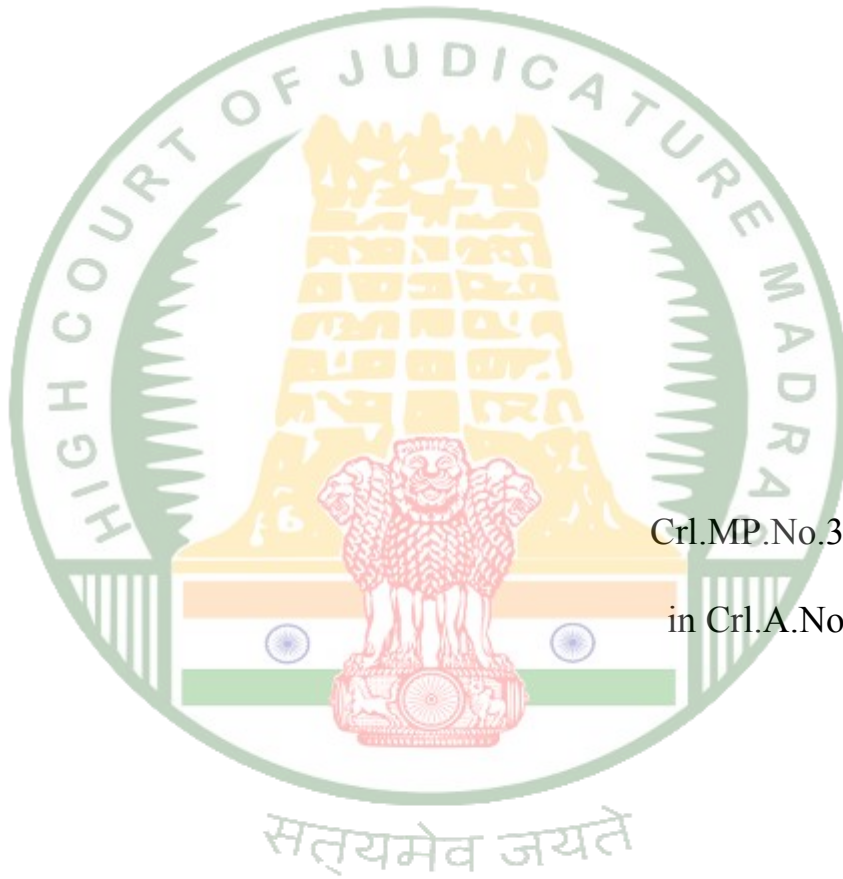


WEB COPY

Crl.MP.No.3856 of 2020
in Crl.A.No.215 of 2020

N.ANAND VENKATESH.J.,

mp



Crl.MP.No.3856 of 2020
in Crl.A.No.215 of 2020

WEB COPY

18.06.2020