

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2020

PRONOUNCED ON : 15.09.2020

CORAM

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

Crl.M.P.No.5086 of 2020

in Crl.A.No.329 of 2020

Jeevanandham @ Jeeva

.. Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Sendamangalam Police Station,
Namakkal District.
(Crime No.445 of 2016)

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C. to suspend the sentence imposed on the petitioner by judgment and order dated 19.02.2020 passed in Spl.C.C.No.6 of 2018 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal and to enlarge him on bail, pending disposal of the appeal.

For Petitioner : Mr.P.Veeraraghavan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

सत्यमेव जयते
O R D E R

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 19.02.2020 passed in Spl.C.C.No.6 of 2018 on the file of the Sessions Court, (Fast Track Mahila Court), Namakkal and to enlarge him on bail, pending disposal of the appeal.

3. The petitioner, who was an accused in Spl.C.C.No.6 of 2018 before the Sessions Court, (Fast Track Mahila Court), Namakkal, was convicted of the offences under Section 363 IPC and Section 5(1) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act") and sentenced him as follows:

S.No.	Provision under which convicted	Sentence
1	Section 363 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one year simple imprisonment.
2	Section 5(1) r/w 6 of the POCSO Act	Ten years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one year simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

4. Challenging the above conviction and sentences, the petitioner has filed CrI.A.No.329 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

5. It is the case of the prosecution that the petitioner, who was aged about twenty six years, has sexually abused the victim girl "X" (PW1) (name not divulged for the sake of anonymity), who was aged about sixteen years. On these allegations, the petitioner was tried, convicted and sentenced as stated supra.

6. Heard Mr.P.Veeraraghavan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (CrI.Side) appearing for the respondent/State.

7. The learned counsel for the petitioner took this Court through the complaint given by "X" (PW1), which formed the basis for the registration of the FIR, and submitted that the version given by "X" (PW1) in the complaint drastically varies with her evidence in the Court, inasmuch as, in the complaint, she has not implicated her cousin Veeramani, but, in her evidence before the Court, she has stated that Veeramani was also present along with the accused when she was ravished. He further submitted that the prosecution had failed to prove the age of "X" (PW1) satisfactorily. He placed reliance on the recent judgment of the Supreme Court in Santosh Prasad @ Santosh Kumar Vs. State of Bihar and submitted that, if the testimony of the prosecutrix does not inspire the confidence of the Court, the accused is entitled to be acquitted and in this case, the testimony of "X" (PW1) suffers several infirmities.

8. Per contra, Mrs.P.Kritika Kamal, learned Government Advocate (CrI.side) refuted the submissions made by the learned counsel for the petitioner.

9. At this juncture, it may be relevant to refer to the legal principles governing the suspension of sentence and bail. In Atul Tripathi vs. State of Uttar Pradesh, 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), 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, is not available in the case of suspension of sentence and that the normal rule is jail and not bail.

10. It is true that in the complaint that was given by "X" (PW1), she had not stated anything about Veeramani, but, in her evidence, she had implicated Veeramani. Be that as it may, Veeramani, who was examined as PW9, turned hostile.

11. In this case, "X" (PW1) was found lying in the bathroom of the petitioner's house with injuries and was carried to the hospital, where, she gave her statement to the police, based on which, the FIR was registered. "X" (PW1) was found with abrasions on her arms. Moreover, the petitioner has not satisfactorily explained, as to how, "X" (PW1) found her way to the bathroom in his house.

12. As regards the age of "X" (PW1), the prosecution has examined Flora Elizabeth (PW13), Head Mistress of Government Girls Higher Secondary School, Sendhamangalam, Namakkal and marked the date of birth records (Ex-P7) of "X" (PW1), which shows that the date of birth of "X" (PW1) as 07.06.2000. The incident had taken place on 19.12.2016 and at that time, "X" (PW1) was sixteen years, six months and twelve days.

12. Taking into consideration the gravity of allegations against the petitioner, this Court is of the view that this is not a fit case to grant suspension of sentence and 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.

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-sd/-

15/09/2020

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
(FAST TRACK MAHILA COURT),
NAMAKKAL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
SENDAMANGALAM POLICE STATION,
NAMAKKAL DISTRICT.

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

Order

in
CRL MP.5086/2020

in
CRL.A.329/2020

Date :15/09/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cs 16/09/2020

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