

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5663 of 2020

in Crl.A.No.376 of 2020

Lakshmanan

... Petitioner

Versus

State Represented by,
The Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai-600 010.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence of Imprisonment on him by way of the Judgment dated 19.02.2020 passed in S.C.No.194/2018 passed by the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Chennai-600 104.

For Petitioner : Mr.David Tyagaraj for
Mr.Vinod Paul Tyagaraj David

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for exclusive trial of cases under the POCSO Act, Chennai in S.C.No.194 of 2018, dated 19.02.2020.

2.The petitioner was convicted for offence under Section 6 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Rigorous Imprisonment.

3.The case of the prosecution is that PW1/victim was born on 22.03.2001. The petitioner is the neighbour and relative of PW1/victim. PW1/victim was initially working in a Export Company and due to her health condition, she was unable to continue with her work. PW1/victim was in the habit of visiting the house of the petitioner for watching TV, the petitioner's wife and PW1/victim became close and they were moving together. On 17.05.2017, when

PW1/victim had gone to the petitioner's house to watch TV, the petitioner came near her and hugged her, despite resistance and he committed penetrative sexual assault on her. PW1/victim did not disclose the same to anyone and they continued to have sexual relationship. Later, PW1/victim started vomiting and she was taken to nearby clinic by her Aunt/PW2. At that time, it was found that PW1 was pregnant. Since the petitioner committed penetrative sexual assault on PW1, a complaint [Ex.P8] was lodged to PW6, who took up the investigation, visited the scene of occurrence, prepared Observation Mahazar [Ex.P11], Rough Sketch [Ex.P10], enquired the witnesses present in the scene of occurrence, sent PW1/victim for medical examination. PW5, the Doctor examined PW1/victim and found she was pregnant and issued Accident Register [Ex.P4], Out Patient Slip [Ex.P5] and Exs.P6 & P7. In the meanwhile, the petitioner was arrested and sent for medical examination. PW4, the Doctor, examined the petitioner and gave potency certificate Ex.P3. Thereafter, the investigation was handed over to PW7, who completed the investigation and filed charge sheet before the Court below.

4. During trial, the prosecution examined 7 witnesses and marked 14 documents. On the side of the defence, no witness and no document were marked. On the side of the Court, 3 documents [Exs.C1 to C3] were marked. The trial Court on appreciation of the evidence and materials produced, had convicted the petitioner as stated above.

5. The learned counsel for the petitioner submitted that PW1/victim is the sister of the petitioner's wife and she used to visit the petitioner's house regularly. During that time, she developed a relationship and had physical relationship with the petitioner. The petitioner does not deny the relationship. PW1 and her parents being uneducated, the date of birth of PW1 in the Birth Certificate [Ex.P1] is not correct and she was not a minor at the time of alleged occurrence. The learned counsel further submitted that since the relationship between the petitioner and PW1 was mutual, there is no question of penetrative sexual assault. Further, PW1 admitted that her physical relationship was not one day affair and she voluntarily cohabited with the petitioner. The petitioner is only taking care of PW1 and her child. PW1 and her child and the petitioner's wife are living as joint family. PW1's family members have no objection and they have permitted PW1 to reside along with the petitioner's family. The petitioner is the only earning member and due to his incarceration, the petitioner's family as well PW1 and her child are suffering.

6. In view of the admission of PW1 and the age of the PW1 was not proved in the manner known to law, the petitioner may be granted relief of suspension of sentence.

7. *Per contra*, the learned Government Advocate [Crl. Side] appearing for the respondent Police submitted that PW1 is the victim, she clearly stated about the penetrative sexual assault committed by the petitioner. Further, PW5, the Doctor who examined PW1, issued medical certificates [Exs.P4 to P7] and found PW1/victim

was pregnant and the petitioner is the reason for the same. During the occurrence, PW1 is a minor and she was aged only 16 years. Taking advantage of minor age and her helpless situation, by giving false promise, the petitioner indulged in sexual assault and committed the offence. PW1, the victim, PW2, the Aunt and PW3, the House Owner have categorically stated about PW1 regularly visiting the petitioner's house and she vomiting and her stomach getting protrude, exhibiting her pregnancy. Through PW1, the Birth Certificate [Ex.P1] and her statement recorded under Section 164 Cr.P.C [Ex.P2] were marked. PW4 is the Doctor, who examined the petitioner and issued Potency Certificate [Ex.P3]. PW5 is the Doctor, who examined PW1, found her pregnant and given certificates [Exs.P4 to P7]. PW6, the Inspector, in charge of the respondent Police on 17.12.2017, received the complaint [Ex.P8], registered an FIR [Ex.P9], visited the scene of occurrence, prepared Observation Mahazar [Ex.P11], Rough Sketch [Ex.P10], examined the witnesses present in the scene of occurrence. PW7 is the Investigating Officer, who subsequently took up the investigation, gave requisition for medical examination and for recording the statement of PW1 under Section 164 Cr.P.C. On completion of investigation, charge sheet came to be filed before the Court below.

8.The trial Court on considering and analysing the evidence and materials produced, had rightly convicted the petitioner. In this case, the petitioner has not disputed his act and he admitted that he is the father of the child born to the victim/PW1 and he had prayed for clemency. In view of petitioner admitting the offence, the grant of suspension of sentence to the petitioner does not arise.

9.This Court considered the rival submissions and perused the materials available on record.

10.This Court by order dated 08.12.2020, directed PW1/victim to appear before this Court through video conference. Today i.e., on 11.12.2020, PW1 appeared before this Court, admitted and reaffirmed that she is residing in the petitioner's house and the petitioner's family are taking care of her and the newly born child and she has no objection for the petitioner to let out on bail.

11.It is seen that in this case, from the manner by which the Birth Certificate [Ex.P1] marked, it cannot be conclusively held that the date of birth of the victim is 22.08.2001. Further, Exs.C1 & C2 are the School Record Sheet and Aadhar Card of the victim. These documents were marked as Court documents, which are disputed. Admittedly, in this case, no witnesses from the municipal authorities or from school authorities were examined to prove the fact that the victim was minor at the time of occurrence. Further The trial Court in its judgment had held that *"Though the date of birth is shown as 15.03.2006 in Exs.C1 & C2, the authenticity of this entries are not proved."* Thus the age of the victim is not conclusively proved.

12.It is also seen that the victim/PW1 and her family is uneducated. The petitioner's family and the victim's family belong to lower strata of the society and they need help and support of each other. The victim/PW1 is taken care by the petitioner's family.

13.In view of PW1/victim's own admission that she and her child are happily residing with the petitioner's family and finding infirmities in the prosecution case and arguable points involved in the appeal, further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

14.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court exclusive trial of cases under POCSO Act, Chennai, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court once in three months i.e., from January 2021 on first working day of English Calender Month at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

11/12/2020

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

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

4 THE INSPECTOR OF POLICE,
W4 ALL WOMEN POLICE STATION,
KILPAUK, CHENNAI-10.

Copy To:

THE HON'BLE POCSO COMMITTEE
HIGH COURT, MADRAS.

+2 C.C. to M/S.DAVID TYAGARAJ Advocate on payment of necessary
charges SR.NO.8119

Order

in

CRL MP.5663/2020

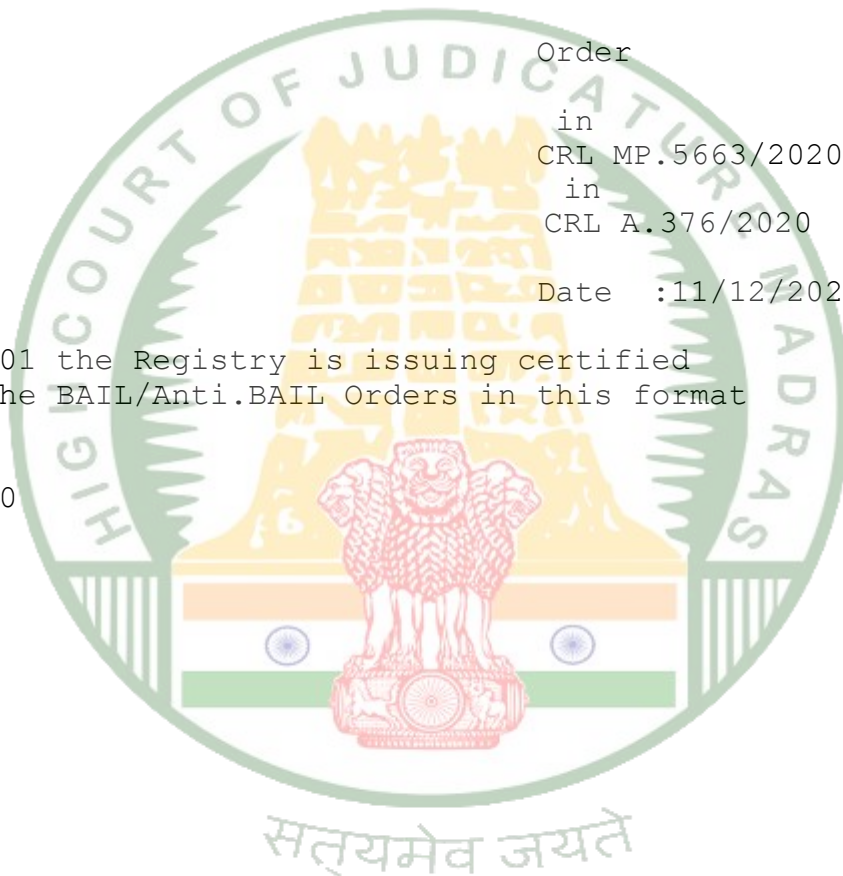
in

CRL A.376/2020

Date :11/12/2020

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