

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.09.2020

PRONOUNCED ON: 15.09.2020

CORAM:

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

Crl.M.P. No.4941 of 2020

in

Crl.A. No.318 of 2020

1 Visu @ Natarajan
2 Pandiyan

Petitioners

vs.

State represented by
the Inspector of Police
Nedungadu Police Station
Nedungadu, Karaikal
(Cr. No.63 of 2017)

Respondent

Criminal Miscellaneous Petition filed under Section 389 Cr.P.C. seeking to suspend the sentence passed on 20.03.2020 by the Special Judge under the POCSO Act, 2012, Karaikal, in Spl. S.C. No.15 of 2018 and enlarge the petitioners on bail, pending final disposal of the appeal.

For petitioners Mr. A. Prakash

For respondent Mrs. Bharatha Chakravarthy
Public Prosecutor (Puducherry)

WEB ORDER COPY

This case was taken up through video conferencing.

2. The petitioners were tried in Spl. S.C. No.15 of 2018 on the file of the Special Court for POCSO Act Cases, Karaikal and were convicted and sentenced vide judgment and order dated 20.03.2020 as under:

Name of Accused	Provision of law under which convicted	Sentence
Visu @ Natarajan (A.1)	Section 450 IPC	7 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment
	Section 4 of the POCSO Act	7 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment
Pandiyam (A.2)	Section 450 IPC	7 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 6 months simple imprisonment
	Section 17 r/w Section 4 of the POCSO Act	7 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment

The aforesaid sentences were ordered to run concurrently.

3. Challenging the aforesaid conviction and sentences, the accused have preferred CrI.A.No.318 of 2020 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr. A. Prakash, learned counsel for the petitioners and Mr. Bharatha Chakravarthy, learned Public Prosecutor for Puducherry.

5. It is the case of the prosecution that in the midnight of 25.10.2017, when the victim girl "X" (name not divulged for the sake of anonymity and who would be, for short, referred to as "X") aged about 14 years, was sleeping in her hut, the accused trespassed into her hut and disconnected the power supply; while Pandiyam (A.2) held "X" tight, Visu @ Natarajan (A.1) ravished her.

6. On these allegations, the police registered a case in Cr. No.63 of 2017 and after completing the investigation, filed a final report in Spl.S.C. No.15 of 2018 in the Court of the Special Judge for POCSO Act Cases, Karaikal, against the petitioners herein and they were tried, convicted and sentenced as detailed in paragraph 2, supra.

7. The submissions of the learned counsel for the petitioners are as follows:

- i. there is a delay of 36 hours in registering the FIR, which is fatal to the case of the prosecution;
- ii. strangely, "X" did not complain to anyone immediately, but according to "X", she told one Jagadeeswari (P.W.7), about the incident, who did not support the prosecution case;
- iii. there are several contradictions between the evidences of "X" and her father, which go to the root of the case;
- iv. the evidence of Dr. Carolin Barla (P.W.13) shows that there were no injuries on the person of "X".

8. Per contra, the learned Public Prosecutor (Puducherry) refuted the contentions put forth by the learned counsel for the petitioners and drew the attention of this Court to the specific findings of the trial Court on all the aforesaid aspects and further made a pointed reference to paragraphs 18 and 19 of the judgment of the trial Court.

9. 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. This Court perused the judgment of the trial Court and gleaned through the evidences of the prosecution witnesses. It is true that "X" did not immediately report to her parents about the incident. However, be it noted that, she has stated that her parents were not in the house on the fateful day and that they had gone for work to another village and only her grandmother was in the hut. She has further stated that her grandmother had hearing impairment; her parents returned home and found "X" to be very morose; she did not go to school on the next day and when they started questioning her, she cried and told everything to her parents who are ordinary peasants and they wanted their son to come down from the town for lodging the police complaint.

11. Pertinent it is to point out that just because Jagadeeswari (P.W.7) turned hostile, that cannot be a good reason to discredit the testimony of "X". Similarly, the absence of injuries on the person of "X", by itself, is not sufficient to hold that she was not subjected to sexual assault, because, the offence was committed while "X" was sleeping in her house. She was caught unawares by the accused, one of whom, held her mouth tight and the other fell himself upon her and had his carnal thirst quenched.

12 Taking into consideration the age of "X" and the gravity of the offence, this Court is of the view that this is not a fit case for suspension of sentence and bail.

13 Since the learned counsel for the petitioners raised the above points, it became necessary for this Court to advert to them. It is made clear that whatever has been stated above will have no bearing on the final disposal of the case.

In the result, this petition for suspension of sentence and bail is dismissed as being devoid of merits.

-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 SPECIAL JUDGE UNDER
THE POCSO ACT KARAIKAL.

2 THE PUBLIC PROSECUTOR
PUDUCHERRY

3 THE INSPECTOR OF POLICE,
NEDNUGADU POLICE STATION,
NEDUNGADU, KARAIKAL.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PONDICHERRY

C.C. to M/S.A.PRAKASH Advocate on payment of necessary charges
sr.6257

Order

in

CrI.M.P. No.4941 of 2020

in

CrI.A. No.318 of 2020

Date :15/09/2020

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RVR 16/09/2020

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