



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Thirteenth day of January Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.7910 of 2019

in CRL.A.No.351 of 2019

SANTHANA BEEROLI

[PETITIONER/APPELLANT]

Vs

STATE BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UDUMALPET,
TIRUPPUR DISTRICT.
CR.NO.08/2017.

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 30.01.2019 in Special S.C.No.20/2018 on the file of the learned Fast Track Mahila Judge of Tiruppur, and release the Petitioner on bail pending Crl.A.No.351 of 2019

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.MOHAN, Advocate for the petitioner, and of MRS. M.PRABHAVATHI, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by R. Subbiah, J)

The petitioner is the sole accused in Special Sessions Case No. 20 of 2018 on the file of the learned Sessions Judge, Tiruppur. He stood charged for the offences punishable under Section 5 (j) (ii) read with 6 and 5 (1) read with 6 of Protection of Children from Sexual Offences (in short POSCO) Act. After trial, the petitioner was



found guilty of the charges and therefore, by Judgment dated 30.01.2019, he was convicted for the offences punishable under Section 5 (j) (ii) read with 6 and 5 (1) read with 6 of POSCO Act and convicted to undergo rigorous imprisonment for life along with fine of Rs.10,000/- for each of the offences (total fine amount Rs.20,000), in default to undergo rigorous imprisonment for one year for each of the offences. Challenging the Judgment dated 30.01.2019 passed by the court below, the present Criminal Appeal has been filed.

2. Pending Criminal Appeal, the petitioner has filed the above Petition for suspension of substantial sentence of imprisonment.

3. The case of the prosecution is that the victim girl was residing along with her family at Chozhamadevi, Madathukulam, Udumalpet, Thirupur District. The accused was also residing in the same area where the victim was residing. According to the prosecution, in the year 2016, on the night of Ramzan Festival, at about 10 pm when the victim was studying in the verandah of her house, the accused came there, hugged the victim girl from behind. The victim raised an alarm and the accused ran away from the said place. In continuation of the said occurrence, on 10.03.2017, the accused had forcible sexual intercourse with the minor girl in the veranda of her house, due to which the victim girl became pregnant. On 23.11.2017, the victim also delivered a female child at Government Hospital, Udumalpet. Later, DNA examination was conducted which proved that the female child was born to the victim and the accused.

4. The trial court, on analysing the oral and documentary evidence produced before it, convicted and sentenced the petitioner/accused, as hereinbefore mentioned.

5. The learned counsel appearing for the petitioner would contend that there was a delay of 8 days in filing the complaint. Further, there was no documentary evidence filed by the prosecution, except Ex.P1, S.S.L.C. certificate of the victim girl, to prove that the victim girl was a minor at the time of the alleged occurrence and consequently, the invocation of POSCO Act itself is erroneous. Further, there is no corroborative evidence made available to prove the age of the victim girl. In the absence of proof of age, the trial court ought not to have convicted and sentenced the accused. The learned counsel for the petitioner also would contend that the victim girl herself has consented for the coitus and therefore it cannot be said that the victim was subjected to forcible penetrative sexual interest, as defined under the POSCO Act. Above all, the learned counsel for the petitioner would contend that now the victim girl herself has come forward to marry the accused. She has also filed an affidavit of undertaking before this Court to that effect. The learned counsel for the petitioner further submits that the petitioner/accused is undergoing incarceration for the past one year. Further, there are several inconsistencies in the case projected by the prosecution, however, since the final hearing of the criminal appeal will take some time, he seeks for suspension of substantial period of sentence.



6. The learned Additional Public Prosecutor vehemently opposes to grant suspension of sentence to the petitioner and she prayed for dismissal of this petition.

7. Today, when the petition is taken up for hearing, the victim girl along with the minor daughter and the mother of the victim were present and we have enquired the victim girl as to the correctness of the affidavit of undertaking given by her and she has stated that she had voluntarily given such an undertaking to marry the accused.

8. Be that as it may, we are not inclined to consider the present petition for suspension of sentence on the ground that the victim girl herself is willing to marry the accused. At the same time, the learned counsel for the petitioner pointed out several inconsistencies in the evidence of the prosecution case. Having regard to the memorandum of grounds of Criminal appeal filed by the petitioner and other facts and circumstances of the case, we are inclined to grant suspension of sentence to the petitioner/accused pending the final disposal of the Criminal Appeal.

9. Accordingly, the substantive sentence of imprisonment imposed against the petitioner/accused by the trial court in the Judgment dated 30.01.2019 passed in S.S.C. No. 20 of 2018 alone is suspended and the petitioner/Accused is directed to be enlarged on bail on condition that he shall execute a bond in 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, Tiruppur and on further condition that he shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

10. Post the Criminal Appeal for final hearing on on 20.02.2020.

-sd/-
13/01/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

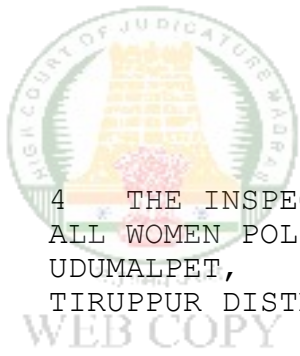
Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE FAST TRACK MAHILA JUDGE
TIRUPPUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
<https://hcservices.ecourts.gov.in/hcservices/>
HIGH COURT, MADRAS.



4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UDUMALPET,
TIRUPPUR DISTRICT.

5 THE SESSIONS JUDGE,
TIRUPPUR.

+1 C.C. to M/S.B.MOHAN Advocate on payment of necessary charges
SR.NO.854

Order

in
CRL MP.7910/2019
in
CRL.A.No.351/2019

Date :13/01/2020

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TA-13/01/2020