

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.6543 of 2020

in

CrI.A.No.428 of 2020

K.Kirubakaran

... Petitioner

Vs.

State rep.by
Inspector of Police,
W-15 All Women Police Station,
Royapuram,
Chennai - 600 013.
(Crime No.1757/2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389 (1) of the Code of Criminal Procedure, to suspend the sentence passed by the trial Court and release the appellant / accused 1 on bail in S.C.No.314 of 2017 dated on 24.09.2018 on the file of the Special Court for cases under POCSO Act 2012 / Mahila Court, Chennai - 104.

For Petitioner : Mr.V.Sambamurthy

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

O R D E R

The petitioner / accused was convicted in S.C.No.314 of 2017 by the Special Court for Cases under POCSO Act, 2012, Mahila Court, Chennai, and tried along with his parents A2 and A3, for the offence under Section 366 IPC and Section 6 of the POCSO Act. The trial Court, by judgment dated 24.09.2018 had acquitted A2 and A3 and convicted the petitioner/A1, for offence under Section 366 IPC and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5000/-, in default, to undergo 6 months Simple Imprisonment and for offence under Section 6 of the POCSO Act was sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5000/-, in default, to undergo 6 months Simple Imprisonment.

Against which the present petition.

2. The gist of the case is that the victim girl P.W.3 was found missing from home on 20.11.2016. Hence, the *defacto* complainant father of the victim had lodged the complaint as 'girl missing' on 20.11.2016. The complaint is Ex.P.1. Thereafter, on information, it came to know that the victim girl was sheltered by A2 and A3 parents of A1. Thereafter, around 3 to 4 months, the victim girl was found with the petitioner at Bombay and the police informed to P.W.1 and P.W.2. P.W.1 and P.W.2 had gone along with their son to Bombay and traced the victim girl and brought them back to Chennai and thereafter, the case was altered. The victim is a minor girl, her date of birth is 05.05.2003 and the Birth Certificate is marked as Ex.P.2. The petitioner and the victim's brother were friends. The petitioner, taking advantage of their friendship, moved with the victim girl and developed love affair and thereafter, they left to Bombay and lived as husband and wife. During that period, the petitioner had penetrative sexual assault with the victim girl. The victim had also given 164 Cr.P.C. statement as Ex.P.3. The Doctor, who had examined the victim on 22.03.2017 had given a report as Ex.P.4. P.W.5, another Government Doctor, had found that the victim pregnant and as per the orders of the High Court in H.C.P.No.2546 of 2017 abortion was conducted. P.W.6, is the Doctor who had given the forensic report as Ex.P.10. P.W.7, is the Doctor, who took blood samples for DNA Examination and report was marked as Ex.P.11. P.W.8, Sub-Inspector of Police, who received the complaint for 'girl missing' on 20.11.2016 and registered F.I.R as Ex.P.12. P.W.9, is the Inspector of Police, who took up the investigation, secured the victim girl, recorded the statement of witnesses, visited the scene of occurrence, arrested the accused and sent the victim and the petitioner for medical examination. After receipt of reports filed the charge sheet in this case.

3. The trial Court, during trial had examined P.W.1 to P.W.9 and marked Ex.P.1 to Ex.P.17. No witness was examined on the side of the witnesses and documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4. The contention of the learned counsel for the petitioner is that trial Court failed to consider the evidence of the victim PW.3 in its right perspective. P.W.1, the father of the victim admits that he is not aware what has been written in Ex.P.1. PW.2, the mother of the victim states about the love affair between the petitioner and the victim and with regard to the other aspects, her evidence is in the nature of hearsay. The primary witness in this case is P.W.3, who states that she had gone to Bombay along with the petitioner by train, since her parents P.W.1 and P.W.2 torched her at home and her father attempted to rape her and her mother abused her and beaten her often and her life was in danger both mentally and physically and to save herself, she had forced the petitioner to take her away and save her. The petitioner was hesitant since the girl was minor, the petitioner was forced by P.W.3 who compelled the

petitioner to take her, otherwise she would end her life. The petitioner, having no other option to save the life of the girl, had taken her to Bombay and they were living in rental house as husband and wife for four months. P.W.3, insisted the petitioner that she should become pregnant which would only save her life by continuing to live with the petitioner as husband and wife. Hence, the petitioner has no other option. Further, P.W.3 in her evidence during investigation as well as in her 164 statement and during the evidence before the trial Court had categorically stated these facts and only on her compulsion, the petitioner was pushed to such circumstances.

5. He further submitted that the petitioner, who had examined P.W.3, had also stated about the same, corroborating the version of P.W.3. The other witness in the case are official witnesses, the Doctor and the Police Personnel. The trial Court, had failed to consider the evidence of P.W.3 and convicted the petitioner. The victim is now major and she is visiting the petitioner's house regularly and she wants to continue her relationship with P.W.1 and live with him as husband and wife.

6. Learned Additional Public Prosecutor submitted that in this case P.W.1 is the father of the victim who had lodged the complaint to P.W.8 on 20.11.2016 informing that minor daughter was found missing from 20.11.2016. Thereafter, F.I.R came to be registered in Crime.No.1757 of 2016 for girl missing and search was made for the victim girl. On coming to know that the petitioner's parents are also involved in the case, they were also arrested and victim was found with the petitioner in Bombay. In this case, P.W.1, is the father of the victim, P.W.2, is the mother of the victim girl, they have categorically stated that the victim girl, P.W.3, is the minor and further from the evidence of P.W.4, Doctor attached to RSPM Hospital, it is seen that the victim girl has been sexually assaulted. P.W.5, another Government Doctor who had found that the victim pregnant. P.W.7, who confirmed the DNA test. Thus, from the evidence of P.W.1 and the medical evidence, it is clearly proved that P.W.3, victim girl was sexually assaulted and the petitioner is the reason for the same. P.W.3 due to her young adolescent age, she had been lured by the petitioner, forcibly taken to Bombay and the petitioner had committed physical assault on her. The evidence of P.W.3 will not save the petitioner. The trial Court considering all these aspects had rightly convicted the petitioner. Hence, he opposed the bail petition.

7. Considering the rival submissions and on a perusal of the materials, it is seen that P.W.3 is the victim in this case. On 20.11.2016 she left the house and eloped with the petitioner. At that time, she was a minor and it is not disputed. P.W.3 in her earliest statement as well as before the Court has categorically stated that she had forced the petitioner and both of them eloped. Further, she has stated the reason for her elopement. The victim is now major. To ascertain the same, this Court directed the victim to appear before this Court. The

victim appeared and she reiterated what he stated in her evidence. Further, she stated that she is regularly visiting the petitioner's house and she is determined to join the petitioner and to continue to live with him as husband and wife.

8. Considering the above facts and circumstances of the case and the period of incarceration undergone by the petitioner and that there are arguable points involved in the appeal, as contended by learned counsel for the petitioner and 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.

9. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail, on condition that the petitioner 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 Special Court for cases under POCSO Act 2012/Mahila Court, Chennai - 600 104, 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 on the first working day at 10.30 a.m., once in three months, till the disposal of the appeal.

-sd/-
02/12/2020

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 MAHILA COURT,
SPECIAL COURT FOR CASES UNDER POCSO ACT 2012,
CHENNAI-600 104.

2 THE SUPERINTENDENT,
CENTRAL PRISON-1, PUZHAL,
CHENNAI-600 006.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
W-15 ALL WOMEN POLICE STATION,
ROYAPURAM, CHENNAI-600 013

C.C. to M/S.V.SAMBAMURTHY Advocate on payment of necessary
charges

Order

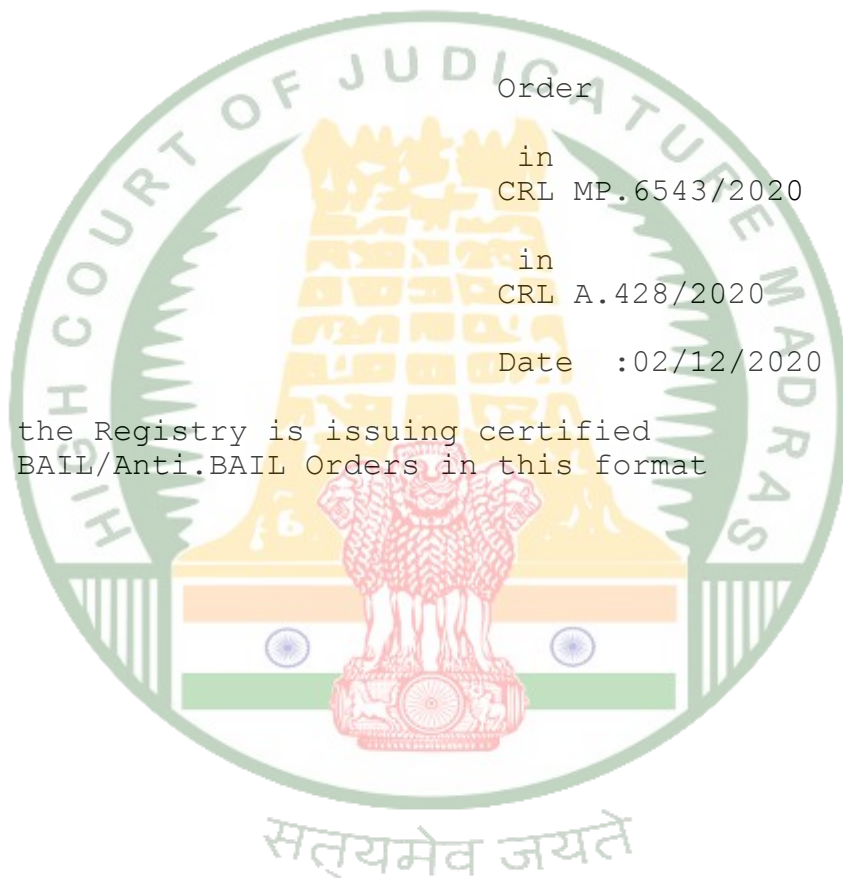
in
CRL MP.6543/2020

in
CRL A.428/2020

Date :02/12/2020

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MK:04/12/2020



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