

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6849 of 2020
in Crl.A.No.449 of 2020

Viswanathan

... Petitioner

Versus

The State Rep. by.,
Inspector of Police,
All Women Police Station,
Mettur.
(Cr.No.4 of 2017).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence imposed in Spl.S.C.No.77 of 2019 dated 06.07.2020 on the file of Sessions Judge, Special Court for offence under Section POCSO Act, Salem pending disposal of the above appeal.

For Petitioner : Mr.M.Subash

For Respondent : Mr.C.Raghavan,
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for the Protection of Children from Sexual Offence Act, 2012, Salem in Special S.C.No.77 of 2019, dated 06.07.2020.

2.The petitioner was convicted for offence under Section 12 of the Protection of Children from the Sexual Offence Act, 2012 and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Simple Imprisonment.

3.The case of the prosecution is that on 02.06.2017, at about 11.45 a.m., the defacto complainant/Parimala/PW1 had gone to fetch water and her minor daughter Navaneetha/PW2 and her son Santhosh Kumar were playing near the house. At that time, the petitioner came there, induced PW2 and Santhosh Kumar, by offering chocolate and took them near tamarind tree, where the petitioner made himself nude and asked PW2 to undress her clothes. The petitioner shook and shown his private parts to PW2. The boy and the girl were sitting by closing their eyes. At that time, PW1 came in search of her children and found PW1 standing without dress. On seeing PW1, the petitioner ran away from the scene of occurrence and the children were brought back home. PW3, the father of PW2, who was working as Mason in Kerala, was informed about the incident. After PW1 reaching the house, PW1 to PW3 went to Mecheri Police Station and lodged a complaint on 03.06.2017, where they were directed to approach the All Women Police Station, Mettur. On 03.06.2017, PW1 lodged a complaint [Ex.P1] to PW8. PW8 on receipt of the same, visited the scene of occurrence, prepared Observation Mahazar [Ex.P3], Rough Sketch [Ex.P9] in presence of PW4, examined PW1 to PW3. On information that the petitioner was in Mechery, Bathrakali Amman Temple, PW8 nabbed the petitioner on 04.06.2017 in presence of PW5. The petitioner gave confession statement admitting the offence and he sent for medical examination. PW8 arrayed for recording the statement under Section 164 Cr.P.C of PW2. PW6, the Headmistress of School, where PW2 was studying, gave certificate [Ex.P4(A)] for the date of birth of PW2. On completion of investigation, PW8 filed the charge sheet before the trial Court.

4.To sustain the case, the prosecution examined PW1 to PW8 examined and marked Exs.P1 to P12 and one Material Object. On side of the defence, one document Ex.D1 was marked. On the evidence adduced and materials produced, the trial Court convicted the petitioner as stated above.

5.The learned counsel for the petitioner submitted that there have been inordinate delay in lodging the complaint [Ex.P1] in this case. The alleged occurrence is said to have taken place on 02.06.2020 and the complaint [Ex.P1] lodged only on 03.06.2017 at about 10.30 p.m. The delay has not been explained. Further, in this case all the witnesses are relatives. PW1 and PW3 are the parents of PW2; PW4 is the maternal uncle; PW5 is from the native of PW1. Hence, no independent witnesses were examined. The learned counsel further submitted that the petitioner has been falsely implicated in this case for the reason that on 03.06.2017, the petitioner participated in agitation to vacate the Tasmac shop from the village. At that time, there was a commotion and some damages were caused to the shop. Hence, the respondent Police falsely implicated the petitioner in this case and the petitioner has got no bad antecedents.

6.From the evidence of PW1, PW2 and PW3, it is seen that there are lot of contradictions. The evidence of PW2 was improved at each stage and she had been tutored by the prosecution. The petitioner was called for enquiry and he was shown arrest. Pursuant to the confession of the petitioner, there is no recovery in this case. All the documents are got-up documents. In this case, the said Santhosh Kumar, who is said to have accompanied with PW2, was not examined as witness.

7.The learned counsel for the petitioner further submitted that the petitioner was convicted for offence under Section 12 of the Protection of Children from Sexual Offence Act, 2012 and the sentence was suspended till 05.08.2020. Due to COVID-19 situation, the petitioner could not approach this Court immediately. After lifting of lockdown, the petitioner preferred the appeal and the suspension of sentence. The petitioner has paid the fine amount of Rs.10,000/- before the trial Court on 06.07.2020.

8.The learned Government Advocate [Crl. Side] appearing for the respondent submitted that PW1, the defacto complainant lodged the complaint [Ex.P1] to the respondent Police on 03.06.2017. On 02.06.2017 PW1 was residing in their village along with her minor children Navaneedha/PW2, Santhosh Kumar and Sathish Kumar. PW2 and Santhosh Kumar were playing outside the house. PW1 had gone to fetch water and when she returned to home, the children [PW2 and Santhosh Kumar] were not there. PW1 enquired one Kavitha, who informed that the children had gone near Tamarind tree. When she visited the place, she found the petitioner standing and holding his private part in front of the children and the children were sitting. On seeing PW1, the petitioner run away from there. Thereafter, PW2 informed PW3, who was working in Kerala. After deliberation and considering the further PW2, a complaint [Ex.P1] was lodged on 03.06.2017. PW8 received the complaint, registered an FIR in Crime No.4 of 2017 [Ex.P8], visited the scene of occurrence, enquired the witnesses, prepared Observation Mahazar [Ex.P3], Rough Sketch [Ex.P9], arrested the petitioner on 04.06.2017, sent the petitioner for medical examination. PW7, the Doctor attached to Government Hospital, Salem examined the petitioner and issued Exs.P6 & P7. PW6, the Headmistress of the school, where PW2 studied, issued Ex.P4(A).

9.In this case, PW4 is the witness for Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P9] and PW5 is the witness for arrest. On completion of investigation, charge sheet came to be filed before the Court below. The defence taken by the petitioner, was disbelieved by the trial Court, by giving the cogent evidence. Hence, he opposed for suspension of sentence.

10. On considering the rival submissions and on perusal of the materials, it is seen that PW2 is the victim, who is aged about 7 years, which is proved by PW6 by issuing Ex.P4(A). PW7, the Doctor examined the petitioner and issued reports [Exs.P6 & P7]. The statement of PW2 was recorded under Section 164 Cr.P.C., by the learned Magistrate, which is marked as Ex.P2. Ex.P2 was recorded through video in compact disc (MO1). In this case, no reason has been given for non examination of the said Santhosh Kumar, who was with PW2 at the time of commission of offence by the petitioner. Further, there are infirmities in the prosecution case and arguable points involved in the appeal. The trial Court already suspended the sentence of the petitioner till 05.08.2020. The appeal is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

11. 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 Sessions Judge, Special Court for Protection of Children from Sexual Offence Act, 2012, Salem, 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 first working day of every English Calendar Month at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

10/11/2020

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 THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCE ACT, SALEM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
METTUR.

+1C.C. to M/S.M.SUBASH Advocate on payment of necessary
charges SR NO.7449

Order

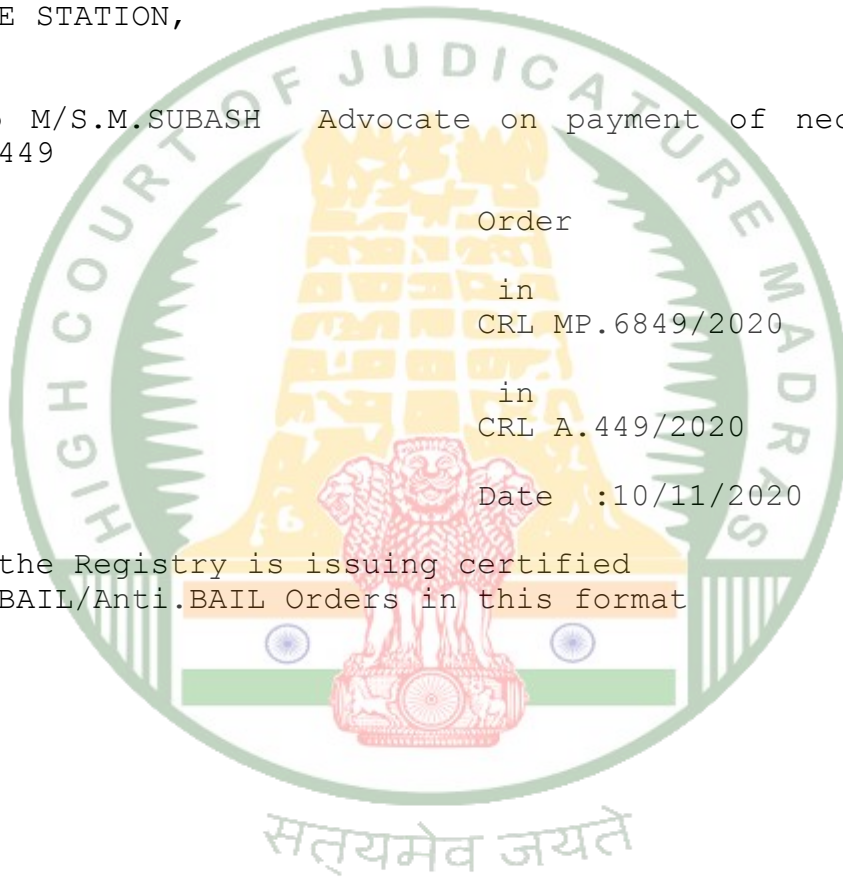
in
CRL MP.6849/2020

in
CRL A.449/2020

Date :10/11/2020

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