

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8069 of 2020

in C.A.No.500 of 2020

Mani @ Manikandan

... Petitioner

Versus

State through the Inspector of Police,
All Women Police Station,
Pennagram.
Crime No.6/2016.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence of imprisonment made in Special Sessions Case No.8 of 2017 on the file of the Fast Track Mahila Court, Dharmapuri convicting the appellant under Section 11 (ii) r/w 12 of the Protection of Children from Sexual Offence Act, 2012, to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1,000/- and in default to undergo 3 months Simple Imprisonment.

For Petitioner : Mr.K.S.Karthik Raja

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment, dated 05.11.2020, in Special S.C.No.8 of 2017, passed by the learned Sessions Judge (FAC), Fast Track Mahila Court, Dharmapuri.

2.The petitioner was convicted for offence under Section 11 (ii) r/w 12 of the Protection of Children from Sexual Offence Act, 2012, and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment.

3.The case of the prosecution is that PW2, the mother of the victim/PW1 lodged a complaint to the respondent Police on 22.09.2016 stating that on 19.09.2016, at about 05.30 p.m., her minor daughter/PW1, who was aged about 6 years playing near the house. PW1 was studying 1st std in Government Urudhu school at Pennagaram. The petitioner was working in cement godown, next to the house of the victim. On the date of occurrence, PW2 had gone to the shop to buy silver anklet, leaving the victim at home. Two days after, when PW2 was drying the clothes in the Terrace, on seeing the petitioner, the victim started weeping pointing him. When PW2 enquired, she was informed that on 19.09.2016, when PW1 was playing outside, PW1 lured by the petitioner by offering chocolate and taken into the cement godown, removed her undergarments and attempted to kiss. The victim pushed him aside and ran away from the there. PW2 informed the same to her father/PW4 and father-in-law/PW3, who are residing nearby and to her husband/PW5. Thereafter, PW1 had gone to the respondent Police, lodged a complaint [Ex.P2] to PW12. PW12 registered the FIR [Ex.P8]. Thereafter, PW14 took up the investigation, examined the witnesses in the scene of occurrence, prepared Observation Mahazar [Ex.P4], Rough Sketch [Ex.P11], arrested the petitioner, produced the victim before PW11. PW11, the Doctor examined her and issued medical certificate [Ex.P5]. PW13, the Doctor examined the petitioner and issued the Potency Certificate [Ex.P9]. PW1 and PW2 were produced before the concerned Magistrate, who recorded the statement under Section 164 Cr.P.C, which were marked as Exs.P1 and P3. On examination of witnesses and collection of documents, charge sheet came to be filed before the trial Court.

4.During trial, the prosecution examined 14 witnesses and marked 12 documents. On the side of the defence, no witnesses were examined and no documents were marked. On conclusion of trial, the petitioner was convicted and sentenced as stated above.

5.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case on misconception. There is a delay of three days in lodging the complaint [Ex.P2] and no reason for the same has been given. The petitioner was attending his work continuously from 19.09.2016. He further submitted that the petitioner had only helped the victim girl to attend nature call by removing her undergarments. The petitioner did not have sexual intention and he was without culpable state of mind and he has been wrongly implicated. PW1 is the only witness to the occurrence. On reading of her statement it would reveal that there is no criminal intention. In this case, the trial Court had suspended the sentence of the petitioner. Hence, he prayed for suspension of the sentence till the disposal of the appeal.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that PW1 is the victim; PW2 is her mother; PW3 is the father-in-law of PW2; PW4 is the father of PW2 and PW5 is the husband of PW2. PW2 lodged a complaint [Ex.P2] to the respondent Police on 22.09.2016. On the date of occurrence, the victim was alone at home in the evening hours. At that time, the petitioner, who was working in the cement godown next to the victim's house, had called her by offering chocolate and had taken her to the godown, where he removed her undergarments and attempted to kiss her. PW1 pushed her and ran from there and she was in such state of shock, she did not reveal the same immediately to her mother. Two days after on 22.09.2016, when she saw the petitioner, she revealed the happenings to her mother/PW2. Then, the complaint [Ex.P2] came to be lodged. The age of the victim/PW1 aged about 6 years is not in dispute and also the petitioner, who is working in a cement godown nearby. PW1 and PW2 had also given statement under Section 164 Cr.P.C., which are consistent. From the evidence of the victim, it is clearly proved that the petitioner is the person, who took the victim and attempted to cause sexual assault by removing her undergarments. PW3 and PW4 had gone and questioned the petitioner about his act and taken him to the police station, where he was shown arrest. PW5 is the father of PW1, whose evidence is also in conformity to the evidence of PW1 to PW4. PW6 is the owner of the cement godown, who confirmed that the petitioner was working in the cement godown. PW7 is the witness for Observation Mahazar [Ex.P4].

7.PW11, the Doctor examined the victim and issued report Ex.P7. PW13, the Doctor examined the petitioner and issued the potency certificate [Ex.P9]. PW12, the Sub Inspector of Police, received the complaint [Ex.P2] and registered an FIR [Ex.P8]. PW14, the Investigating Officer conducted investigation and filed the charge sheet. On appreciation of the same, the trial Court convicted the petitioner as stated above.

8.The learned Additional Public Prosecutor further submitted that the trial Court had suspended the sentence of the petitioner in CrI.M.P.No.609 of 2020 from 05.11.2020 to 04.12.2020 and it has been extended till 18.12.2020.

9.On considering the rival submissions and on perusal of the materials, it is seen that PW1 is the victim, who clearly stated about the occurrence taken place on 19.09.2016. The other witnesses PW2 to PW5 are the mother, grand fathers and father of the victim. They have all stated about what was stated to them by PW1. From the medical evidence, it is seen that there is no presence of sperm. The petitioner himself admitted that he had helped the victim to attend nature's call, which has been wrongly construed by her parents and relatives. The trial Court without considering the evidence had convicted the petitioner for causing harassment. The qualifying word is that whether the petitioner had any sexual intent, in view of the available materials and

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submissions made. Further, the trial Court already suspended the sentence of the petitioner till 18.12.2020. Hence, finding infirmities in the prosecution case and arguable points involved in the appeal, considering the period of incarceration and 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.

10. 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 (FAC), Fast Track Mahila Court, Dharmapuri 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 month i.e., from January 2021 at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

16/12/2020

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 (FAC),
FAST TRACK MAHILA COURT, DHARMAPURI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PENNAGARAM, DHARMAPURI DISTRICT.

+1C.C. to M/S. K.S.KARTHIK RAJA Advocate on payment of
necessary charges SR NO.8324

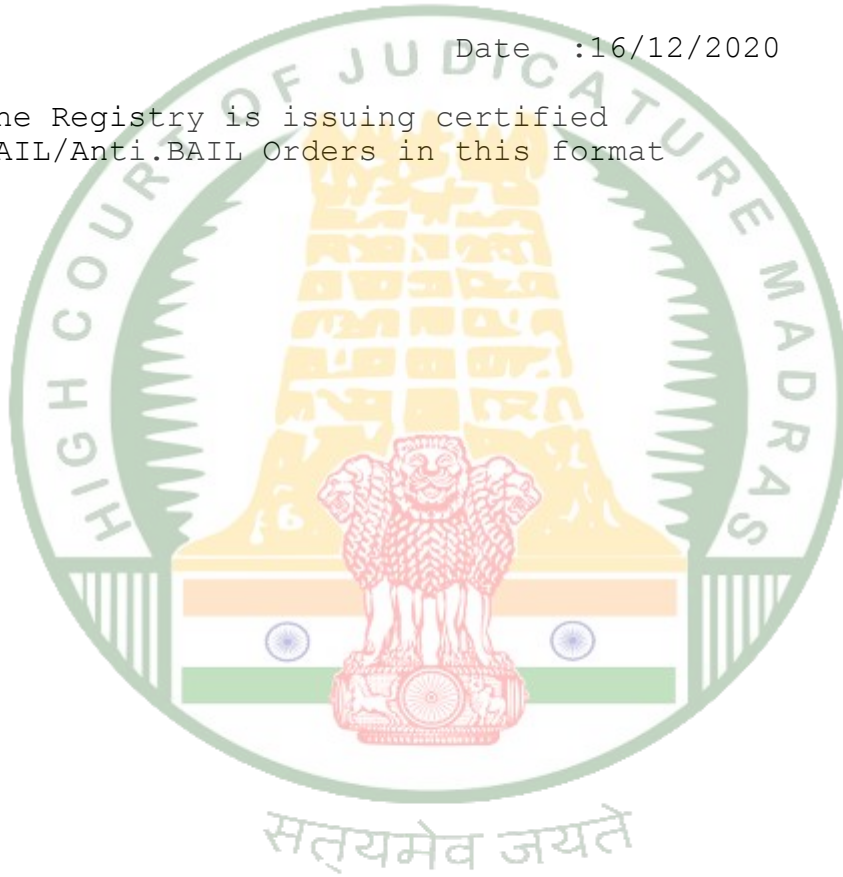
Order

in
CRL.MP.NO.8069/2020
in
CRL.A.NO.500/2020

Date :16/12/2020

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MK:31/12/2020



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