

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.13428 of 2019

in

Crl.A.No.625 of 2019

Golam Mortoja

... Petitioner

Versus

The State rep. by
The Inspector of Police,
Railway Police Station,
Podhanur, Coimbatore.
(Crime No.218 of 2016)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in S.C.C.No.12 of 2017 on the file of the Sessions Judge Mahila Court, Mahalir Neethimandram, Coimbatore dated 28.08.2019 and release the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

The petitioner herein is accused in S.C.C.No.12 of 2017, on the file of the Sessions Judge Mahila Court, Mahalir Neethimandram, Coimbatore was convicted by the judgment dated 28.08.2019 for the offence under Sections 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months Rigorous Imprisonment and the period already undergone by the petitioner is set off. Aggrieved over the same, the present Criminal Appeal filed along with a petition for suspension of sentence.

2.The gist of the case is that on 11.07.2016, the victim girl who is aged about 16 years travelled along with her parents and relatives in Train No.12601 (Chennai - Mangalore Central Express). The victim travelled in S-9 Coach, Berth No.67. When the train was nearing Podhanur Railway Station, the petitioner who travelled in the same coach in Berth No 62, put his hand through the iron grill in between the two upper berth and touched the victim girl's private part and sexually assaulted her. Hence, a case came to be registered against the petitioner for the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012.

3. During trial, the prosecution has examined 9 witnesses as P.W.1 to P.W.9 and marked 12 documents as Exs.P1 to P12 and no material object was marked. On the defence side, no witnesses were examined and no document was marked. On the completion of the trial, the Court below convicted the petitioner as stated above.

4.The learned counsel for the petitioner submitted that based on the complaint / Ex.P1, a case was registered in Palakkad Railway Station in Crime No.192/2016, for the offence under Section 7 and 8 POCSO Act. Later the case was sent to Tiruppur Railway Police Station and registered in Crime No.218 of 2016 under Section 7 and 8 POCSO Act/[Ex.P8], since the occurrence took place under the jurisdiction of Tiruppur Railway Police Station. He further submitted that the petitioner was no way connected with the crime as alleged against him and only on a presumption that he has committed the said offence and arrested by the respondent Police. P.W.1/victim girl deposed that one person touched her body and she did not point out the petitioner and according to the prosecution, two persons travelled in the said berth No.62 and hence there is a contradiction in the version of P.W.1. No independent witness has been examined on the cabin of berth No.62, who are the right person to point out the culprit.

5.The learned counsel further submitted that P.W.1/victim girl in her complaint states that she only saw the hand of the accused in which a thread was tied. However, either in the investigation by the Enquiry Officer nor in the Chief examination, this aspect was not disclosed. P.W.1/Victim girl, P.W.3/Mother of the victim and P.W.8/Senior T.T.R, East Railway, West Bengal clearly state that the entire lights in the coach are switched off and all the witnesses in the berth were sleeping. Hence, the prosecution failed to prove that how the accused was identified that he is the culprit. Therefore, prayed for granting bail to the petitioner.

6.The learned Additional Public Prosecutor filed his counter and made his submission that on 11.07.2016, the victim girl travelled along with her parents and relatives in Train No.12601 (Chennai - Mangalore Central Express). The victim was travelled in S-9 Coach, Berth No.67. When the train was nearing Podhanur Railway Station, at about 03.00 hours, the petitioner who travelled in the same coach in

Berth No 62, extended his hand through the iron grill in between the two upper berth and touched the victim girl's private part and sexually assaulted her. The victim girl in her statement under Section 164 Cr.P.C/[Ex.P4] state that she saw the hand of the accused/petitioner, there was a small thread and she identified the accused/petitioner on seeing the thread. On the same day, at about 05.15 hours, a case against the petitioner was registered in Crime No.192 of 2016, under Section 7 and 8 POCSO Act/[Ex.P.5], by the Senior Civil Police Officer, Railway Police Station, Palakkad based on the complaint/[Ex.P1]. The confession of the accused was recorded in the presence of witnesses and sent to remand. Since the occurrence took place within a jurisdiction of Tiruppur Railway Police Station, the case was sent to Tiruppur Railway Police Station through proper channel. Later, the case was registered by the Sub-Inspector of Police, Podhanur Railway Station in Crime No.218 of 2016 under Section 7 and 8 POCSO Act/[Ex.P8] on 01.12.2016 at about 03.00 hours. During investigation, the witnesses were examined and their statement recorded. On 10.02.2017, the victim girl was taken to the Magistrate to record her statement under Section 164 Cr.P.C/[Ex.P4]. After completion of elaborate and detailed investigation, based on the statement of witnesses and material evidences, on 13.02.2017, charge sheet was filed against the accused before the Trial Court in Spl.C.C.No.12 of 2017. The Trial Court considering the evidence and materials had rightly convicted the petitioner as stated above. The petitioner is not a native of Tamil Nadu and if bail granted to the petitioner he would not be available for the final hearing. Hence opposed for granting bail.

7. Considering the rival submissions and perusal of the materials and the evidence, it is seen that P.W.1/victim girl in her evidence deposed that she saw only the hand of the accused/petitioner in which a small thread was tied and she identified the petitioner only on seeing the thread. P.W.1/victim girl, P.W.3/Mother of the victim and P.W.8/Senior T.T.R, East Railway, West Bengal in their evidence deposed that the occurrence took place at about 3.30 hours all the co-passengers were sleeping and the entire lights in the coach are switched off. Hence, the prosecution failed to prove how the petitioner was identified as an accused. According to the prosecution, two persons travelled in the said berth No.62 and there is a contradiction in the version of P.W.1. Further, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for 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.

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) each with two local sureties each for a like sum to the satisfaction of the Sessions Judge Mahila Court, Mahalir Neethimandram, Coimbatore, within a period of 15 days from the date of receipt of a copy of this order and on further

condition the petitioner shall appear before the said Court on the first working day of once in three month of English Calender Month at 10.30 a.m. till the disposal of the appeal and the brother of the petitioner/Mohammad Yeakub shall file an affidavit of undertaking that the petitioner will appear before the said Court regularly and will not abscond.

-sd/-

24/11/2020

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
MAHILA COURT MAGALIR NEETHI MANDRAM,
COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
RAILWAY POLICE STATION,
PODHANUR, COIMBATORE.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. J.FRANKLIN Advocate on payment of necessary charges

सत्यमेव जयते
Order

in
CRL MP.13428/2019

in
CRL A.625/2019

Date :24/11/2020

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RVR 01/12/2020