

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Friday, the Twentieth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.14837 of 2019

IN CRL.A.NO.714 OF 2019

PAPPAIAH

[ PETITIONER / APPELLANT /  
ACCUSED ]

Vs

THE STATE REPRESENTED BY  
INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
HOSUR,  
KRISHNAGIRI DISTRICT.

[ RESPONDENT / RESPONDENT /  
COMPLAINANT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.714/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in Spl.S.C.No.60 of 2018 dated 5.9.2019 passed by the Sessions Court, Fast Track Magalir Neethimandram, Krishnagiri and enlarge the petitioner on bail, pending disposal of the above Crl.A.No.714/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.714/2019 on the file of the High Court and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the petitioner and of M/S.T.SHUNMUGARAJESWARAN, GOVERNMENT ADVOCATE O/O.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

The Appellant/Accused has filed the present Appeal against the Judgment of conviction and sentence passed by the Fast Track Mahila Court, Krishnagiri in Spl. S.C. No. 60 of 2018 dated 05.09.2019. The Appellant/Accused has also filed this Petition to suspend the sentence awarded by the Trial Court.

2. The case of the prosecution is that at 1.45 p.m. on 31.08.2018 when the Victim Girl, aged about 4-5 years was playing in front of the house of the Appellant/Accused, the Appellant/Accused took the said Victim Girl to his house and locked the door and removed the jatty of the Victim Girl and laid his body on the Victim Girl and committed penetrative sexual assault on the said Victim Girl, and hence, the Appellant/Accused is liable to be punished under Section 5(m) read with Section 6 of the Protection of the Children From Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act for brevity).

3. The Trial Court found the Appellant/Accused guilty under Section 9(m) read with Section 10 of the POCSO Act and sentenced him to undergo 5 years rigorous imprisonment and also imposed a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo 6 months rigorous imprisonment. It also gave set off under Section 428 of Cr.P.C. with regard to the period already undergone by the Appellant/Accused.

4. Aggrieved by the aforesaid Judgment of conviction and sentence, the Appellant/Accused has filed the present Appeal.

5. The learned Counsel for the Appellant/Accused has submitted that the Doctor who examined the Victim Girl (P.W.-15) has deposed before the Trial Court that she did not find any external injury on the Victim Girl and she further deposed that she collected the vaginal smear and sent to the chemical examination and she received chemical report and in the said report, it has been stated that the spermatozoa is not found. He further submitted that even though the Doctor has deposed that no external injury was found and spermatozoa also not found, she opined that there was a possibility of subjecting the Victim Girl to sexual assault and the said evidence is without any basis. He further submitted that the Appellant/Accused is having a chance of success in the Appeal and there are material contradictions in the evidence of the prosecution witnesses. He further submitted that there is no possibility of taking up of the Appeal in near future. He further submitted that the Appellant/Accused is in custody from the date of Judgment of conviction and sentence, i.e., 05.09.2019. He further submitted that this Court by the order dated 17.02.2020 has directed the Appellant/Accused to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) before the Trial Court for considering the Petition seeking suspension of sentence and in pursuance of the said order, the Appellant/Accused so far not deposited the said amount, however, the Appellant/Accused is willing to deposit the said amount before the Trial Court, and therefore, he prayed to suspend the sentence which was awarded by the Trial Court.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the Respondent has submitted that the Victim Girl and also the Mother of the Victim Girl have categorically deposed before the Trial Court that the Appellant/Accused has committed sexual assault, and taking into consideration of the said fact, the Trial Court has rightly convicted the Appellant/Accused under Section 9(m) read with Section 10 of the POCSO Act, and therefore, he strongly opposed to suspend the sentence.

7. Taking into consideration of the submission made by the learned Counsel for the Appellant/Accused that the Doctor who examined the Victim Girl (P.W.-15) has deposed before the Trial Court that she did not notice any external injury on the Victim Girl and the chemical report shows that no spermatozoa found in the vaginal smear, and also the fact that the Appellant/Accused is in custody from the date of Judgment of conviction and sentence, i.e. 05.09.2019, and there is no possibility of taking up of the Appeal in near future, and also the submission made by the learned Counsel

for the Appellant/Accused that the Appellant/Accused is willing to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) as directed by this Court by the order dated 17.02.2020, this Court is inclined to suspend the sentence of the Appellant/Accused by imposing the following conditions:-

- (i) that the Appellant/Accused shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh Fifty only) before the Trial Court, and on such deposit, the Trial Court is directed to release the Appellant/Accused on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of whom, one should be blood relative, each for a like sum to the satisfaction of the learned Fast Track Mahila Court, Krishnagiri;
- (ii) that the Trial Court is directed to disburse the said amount to the mother of the Victim Girl;
- (iii) that the Appellant/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities;
- (iv) that the Appellant/Accused shall appear before the Trial Court on the first working day of every month at 10.30 a.m., until the disposal of the Appeal, and if he is not able to appear before the Trial Court on any day, due to unavoidable circumstances, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the Trial Court. Such an application shall not be entertained often; and
- (v) on the failure of the Appellant/Accused, depositing the said amount, it is open to the Trial Court to commit the Appellant/Accused into custody for undergoing the sentence.

-sd/-

20/03/2020

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,  
FAST TRACK MAHALIR NEETHIMANDRAM,  
KRISHNAGIRI.

2 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
HOSUR,  
KRISHNAGIRI DISTRICT.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, VELLORE.

C.C. to M/S.R.SANKARASUBBU Advocate on payment of necessary charges

Order

in  
CRL MP.14837/2019

in  
CRL.A.714/2019

Date :20/03/2020

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cs 24/03/2020

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