

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twentieth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.18017 of 2019

IN CRL.A.NO.835 OF 2019

ADHIKESAVAN

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

INSPECTOR OF POLICE,
K-10, KOYAMBEDU POLICE STATION,
CHENNAI.
CR.NO.1682/2017.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.835/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed on the petitioner/appellant in S.C.No.43/2018 on the file of Learned Sessions Judge, Mahila Court, Chennai (Mahila Court Spl Court for caes under POCSO Act) dated 22.07.2019 and enlarge the petitioner on bail, pending disposal of C.A.NO.835/2019.[crl.mp.no.18017/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.835/2019 on the file of the High Court and upon hearing the arguments of M/S.K.R.RAMESH KUMAR, Advocate for the petitioner and of MRS.M.PRABHAVATHI ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by **R.SUBBIAH, J**]

The petitioner/accused faced trial in S.C. No.43 of 2018 on the file of the Mahila Court/Special Court for Cases under POCSO Act/Children's Court, Chennai. The Trial Court under judgment dated 22.07.2019, convicted the petitioner and sentenced him as follows:

Offence	Sentence
302 IPC	Life imprisonment and fine of Rs.10,000/- i/d 6 months S.I.

Hence, petitioner seeks suspension of sentence.

2. The case of the prosecution is that the deceased Kousalya is the daughter of the accused. The wife of the accused viz. Mohana got separated from the accused due to some misunderstanding and stayed at Manasa Special School along with her mentally retarded daughter Kousalya. The accused was supposed to pay a sum of Rs.5,000/- towards maintenance to his wife and daughter as per the order of the Court. But the accused defaulted to pay the maintenance amount. On 13.09.2017, Mohana left her daughter in front of the house of the accused. The accused took his daughter and left her at his relative's house for some time. Thereafter, they asked the accused to take back his daughter along with him. On 20.09.2017 at about 10.00 a.m. he killed her by strangulating her neck with a nylon rope.

3. Learned counsel for petitioner submits that the petitioner is an Auto driver. P.W.2 Asokan, who has been running auto in the same stand where the petitioner is also attached, has informed the scene of occurrence to P.W.1, the Village Administrative Officer. After receiving the information from P.W.2, P.W.1 informed the police and went to the house of the petitioner, where he found only the body of the deceased, but not the petitioner. Learned counsel for the petitioner informs that some one had murdered the deceased and left the body at the house of the petitioner, who went to the police station only in order to report the same. In the confession statement, the petitioner has stated that on 13.09.2017 his wife left the deceased in his house and thereafter, he left his daughter in the house of P.W.4, who is the brother in law of the petitioner. Again P.W.4 left the deceased in the house of the petitioner, who only took care of his daughter.

4. Learned counsel for petitioner further submits that the petitioner has been confined at Central Prison, Puzhal, Chennai for the past six months. There are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. Submitting as above, learned counsel prays this Court to suspend the sentence passed against the petitioner.

5. Learned Additional Public Prosecutor vehemently opposes to grant suspension of sentence to the petitioner.

6. Considering the facts and circumstances of the case and in view of the fact that the petitioner has been in custody for six months, that there are several infirmities in the prosecution case and there are arguable points involved in the appeal 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.

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 in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned V Metropolitan

Magistrate, Egmore, Chennai and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

20/02/2020

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/CHILDRENS COURT,
CHENNAI

2 THE METROPOLITAN MAGISTRATE,
NO.V, EGMORE, CHENNAI

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

6 THE INSPECTOR OF POLICE,
K-10, KOYAMBEDU POLICE STATION,
CHENNAI.

+2 C.C. to M/S.K.R.RAMESH KUMAR Advocate on payment of necessary charges SR.NO. 3340

Order
in
CRL MP.18017/2019

IN CRL.A.NO.835 OF 2019

Date :20/02/2020

From 7.2.2001 the Registry is issuing certified
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RD 21/02/2020