

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 18815 of 2019

in

Crl. M.P. No. 16353 of 2019

in

Crl. A. No. 856 of 2018

Rajiv Gandhi

... Petitioner/ Petitioner/Appellant

Vs

The State by,
Inspector of Police,
Panruti Police Station,
Cuddalore District,
Crime No. 394 of 2016.

... Respondent/Respondent/Respondent

PRAYER :

Criminal Miscellaneous Petition filed under Section 482 of Criminal Procedure Code, praying to grant extension of time for two months in Crl.MP.16353 of 2019 in Crl.A.No.856 of 2018 order dated 26.11.2019, pending disposal of the Crl.A.No.856 of 2018 on the file of this Court.

For Petitioner : Mr. R. Sankarasubbu

For Respondent : Mrs. M. Prabhavathi,
Additional Public Prosecutor

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2.This petition has been filed to suspend the sentence of life imprisonment imposed on the petitioner/appellant in Spl.S.C.No.5 of 2017 dated 14.11.2018, for having sexually assaulted a 13 year old IX Standard student who was studying under him.

3.The prosecution case is that the petitioner kidnapped a 13 year old IX Standard student on 06.06.2016 from the School and took her to Tirumathi and tied 'Thali' and sexually assaulted her by

getting a room on rent till 12.06.2016. On 12.06.2016, he came to Vellore in his Motorcycle. Thereafter, they went to Hogenakkal in a bus, where also, he sexually assaulted her. Then, he left the girl at Salem in a bus which was proceeding to Panruti. Thereafter, the victim reached her house. Based on the complaint given, a case was registered and trial was conducted. On appreciation of all the evidence, the Mahila Court, Cuddalore convicted and sentenced the petitioner for life imprisonment.

4. Mr.R.Sankarasubbu, learned counsel appearing on behalf of the petitioner very elaborately and extensively argued three points. The first point is there is no sufficient evidence to convict the petitioner. The second point is, the Court has got powers under Section 437 of Cr.P.C to release the accused on bail when the accused/convict is found to be indisposed and the third point is, the right of speedy trial is available to the petitioner/appellant. He relied upon many judgments to stress the point that there was no sexual assault and it was only consensual. He would also submit that the petitioner has got right of bail on the ground of illness and judgments in support of the same have been quoted by the learned counsel for the petitioner right from the year 1977 rendered by the Hon'ble Supreme Court.

5. However, Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondent, in a nutshell, but effectively, contended that the child studying under him was kidnapped and sexually assaulted and the same was proved by evidence of P.W.1 and P.W.2 and the victim herself as P.W.4. Therefore, no mercy should be shown to the petitioner and prayed for dismissal of the petition.

6. Heard the parties and perused the materials available on record.

7. This court is also in agreement with the contention of the learned Additional Public Prosecutor. A teacher who is supposed to mould a student by his teaching, has done an act which is prohibited under law and which is going to last long and pain the victim throughout her life. Though Mr.R.Sankarasubbu would submit that it is a case of elopement and the act of the petitioner cannot be termed as sexual assault and it was only consensual, this Court is unable to understand how a minor girl's consent can be taken as consent. A 13 year old girl is a child and the petitioner, who is a Teacher has behaved like a monster and sexually assaulted the girl from 06.06.2016 till 12.06.2016 by kidnapping her. The case of the prosecution is well described by P.W.4, the victim herself and therefore, neither it is a case of elopement nor consensual sex.

8. As far as the argument with regard to case on medical grounds is concerned, it has been stated that the petitioner is advised to undergo regular follow-up in O.P.D for liver transplantation once in three months only. Therefore, he can regularly follow-up the treatment by visiting the O.P.D.

9. Considering the gravity of the offence, this Court is not inclined to suspend the sentence. Accordingly, this petition is dismissed. Consequently, Crl.M.P.No. 18815 of 2019 is also dismissed.

Post the Crl. A.No. 856 of 2018 for final hearing on 14.09.2020.

-sd/-
28/08/2020

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, CUDDALORE.

2 THE SUPERINTENDENT,
CENTRAL PRISION, CUDDALORE.

3 THE INSPECTOR OF POLICE,
PANRUTI POLICE STATION,
CUDDALORE DISTRICT.

4 THE OFFICER IN CHARGE,
TOWN POLICE STATION,
PANRUTI.

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

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

Order

in
CRL MP.18815/2019

in
CRL.MP.16353/2019
in
CRL.A.856/2018

Date :28/08/2020

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CS 03/09/2020