

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2020

PRONOUNCED ON : 31.07.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Crl.M.P.No.19076 of 2019

in Crl.A.No.910 of 2019

Chandru

.. Petitioner

Vs.

State represented by
The Inspector of Police,
Erode All women Police Station,
Erode District.
(Crime No.6 of 2017)

.. Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C. to suspend the sentence imposed on the petitioner by judgment and order dated 18.09.2019 passed in Special S.C.No.9 of 2018 on the file of the Magalir Neethi Mandram (Fast Track Mahila Court), Erode and to enlarge him on bail, pending disposal of the appeal.

For Petitioner : Mr.R.Selvakumar

For Respondent : Mr.K.Madhan
Government Advocate
(Crl.Side)

O R D E R

This case is taken up through video conferencing.

2. This petition is filed seeking to suspend the sentence imposed on the petitioner, by judgment and order 18.09.2019 passed in Special S.C.No.9 of 2018 on the file of the Magalir Neethi Mandram (Fast Track Mahila Court), Erode and to enlarge him on bail, pending disposal of the appeal.

3. The petitioner, who was an accused in S.C.No.9 of 2018 before the Magalir Neethi Mandram (Fast Track Mahila Court), Erode, was convicted of the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act") and sentenced as follows:

Provision under which convicted	Sentence
Section 4 of the POCSO Act	Eight years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo three months simple imprisonment.

4. Challenging the above conviction and sentence, the petitioner has filed Crl.A.No.910 of 2019 along with the instant miscellaneous petition seeking suspension of sentence and bail.

5. Heard Mr.R.Selvakumar, learned counsel for the petitioner and Mrs.K.Madhan, learned Government Advocate (Crl.Side) for the respondent/State.

6. The learned counsel for the petitioner submitted that the incident in this case is said to have been taken place on 01.07.2017 and the FIR was registered only on 06.07.2017 and thus, there is an unexplained delay of five days, which is fatal to the case of prosecution. He further took this Court through the evidence of Dr.Vanithasri (PW4) and submitted that in the absence of any injury in the private part of the victim girl "X" (PW2) (name not disclosed for the sake of anonymity), the allegation that she was forcibly ravished by the petitioner, stood belied. He also submitted that when "X" (PW2) was admittedly unwell on 30.06.2017, her assertion that she was going around the village on 01.07.2017, sounds improbable.

7. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the petitioner.

8. This Court gave its anxious consideration to the rival submissions.

9. For deciding this petition for suspension of sentence and bail, it is not necessary for this Court to appreciate the evidence on record as is done in an appeal.

10. This Court read the evidence of "X" (PW2). The incident had taken place on 01.07.2017, when "X" (PW2) was studying in XI standard and was sixteen years old. "X" (PW2), in her evidence, has stated that she was studying in a school at Coimbatore and her parents were living in their native village in Kangeyam; on 30.06.2017, she was unwell and so, her grandfather Dakshinamoorthy (PW6) took her to his village Koththangadu at the request of her parents; on 01.07.2017, when Dakshinamoorthy (PW6) was away on work, she went around the village, met her primary school teacher and some old friends, who had studied with her earlier; the petitioner, who was aged about forty years, was running a power loom in the said village; "X" (PW2) knew the petitioner; the petitioner gave Rs.100/- to her, with which, she brought some notebooks and left them in her friend, Nirmala's house; around 8.30 p.m., when "X" (PW2) was passing by the power loom of the petitioner, the latter called her inside; when she unwittingly went

inside, he closed the door, removed her jeans and ravished her; she cried unable to withstand the pain, but, he did not release her; she swooned; around 11.00 p.m., he placed her outside the back door of his loom, locked the loom from inside and left through the front door; only on the next day, around 4.30 a.m., she was seen by one Rani, who informed her grandfather, since Rani knew that Dakshinamoorthy (PW6) was searching for her; Dakshinamoorthy (PW6) informed the parents of "X" (PW2), who returned from Kollimalai and thereafter, the complaint was given on 06.07.2017, based on which, a case was registered in Crime No.6 of 2017 and investigation taken on.

11. Coming to the submissions of the learned counsel for the petitioner seriatim, this Court is unable to agree with the submission that the delay of five days in registering the complaint is fatal to the prosecution case, inasmuch as, Saraswathi (PW1), mother of "X" (PW2), has explained in her evidence that on her return from Kollimalai, her daughter narrated everything and being a girl child, they did not know how to react; they went to the local police station, but they were directed to go to the All Women Police Station.

12. Coming to the second submission of the learned counsel for the petitioner, the incident had taken place on 01.07.2017 and "X" (PW2) was examined by Dr.Vanithasri (PW4) on 06.07.2017. In the cross-examination of "X" (PW2), she has stated that she did not suffer any bleeding injury in her private part. Hence, absence of injury in her private part, by itself cannot be a reason to disbelieve the evidence of "X" (PW2).

13. Coming to the third submission of the learned counsel for the petitioner, it is true that "X" (PW2) was not well on 30.06.2017 and that is why, she was brought by her grandfather to his village. To say that, she should remain confined in the house and not go out to meet her friends on the next day would amount to an unreasonable demand from a sixteen year old girl.

14. The facts obtaining in this case do not pass muster the law laid down by the Supreme Court in Sidhartha Vashisht Vs. State (NCT of Delhi)

15. For the reasons aforesaid, this Court does not find any merit in this petition and consequently, the same stands dismissed. It is made clear that whatever is stated above is only for the limited purpose of deciding this petition for suspension of sentence and bail alone and cannot be pressed into service during final hearing of the appeal.

The Registry is directed to call for the records, prepare the typed set of papers and post the main appeal for final disposal immediately after physical appearance of Advocates before this Court is permitted.

-sd/-

31/07/2020

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
MAGALIR NEETHI MANDRAM
[FAST TRACK MAHILA COURT] ERODE

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE,
ERODE ALL WOMEN POLICE STATION,
ERODE DISTRICT.

Copy to :

THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT, MADRAS

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

Order

in
CRL MP.19076/2019

in
CRL A.910/2019

Date : 31/07/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 07/08/2020