



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Friday, the Thirteenth day of March Two Thousand Twenty

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PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM
CRIMINAL MISCELLANEOUS PETITION No.14833 of 2018
IN CRL.A.NO.700 OF 2018

PREMKUMAR

[PETITIONER]

Vs

THE STATE REP. BY ITS
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
AMBUR, VELLORE DISTRICT.
CR.NO.2 OF 2016.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.700/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of the appellant in connection with S.S.C.No.43 of 2016 on the file of the Learned Fast Track Mahila Judge (Sessions), Vellore, Vellore district dated 06.10.2018 pending disposal of the main Criminal appeal.[CRL.MP.NO.14833/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.700/2018 on the file of the High Court and upon hearing the arguments of M/S.M.SATHISH KUMAR, Advocate for the petitioner and of MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Criminal appeal has been filed by the accused/appellant against the judgment of conviction and sentence passed by the Fast Track Mahila Court (Sessions Court) Vellore, Vellore District in S.S.C.No.43 of 2016 dated 06.10.2018.

2. The case of the prosecution is that on 05.03.2016 at about 1.00p.m, when the victim girl aged about 7 years reading the book nearby the house of the accused, the accused with an intention to commit rape, called the victim girl into his house and locked the door and kissed the victim girl and hugged and inserted his finger in the private part of the victim girl and hence he is liable to punish under Sections 366, 376 (2)(i) of IPC and under Section 6 r/w 5(m) of the Protection of Children from Sexual Offences Act



2012 (herein after referred to as POCSO ACT).

3. The trial court after trial convicted the accused and sentenced to undergo seven years rigorous imprisonment and also imposed a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment for the offence under Section 366 of IPC and 10 years rigorous imprisonment and also imposed a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment for the offence under 6 r/w 5(m) r/w 3(b) of the POCSO ACT and he also directed to run the aforesaid sentences concurrently and also ordered set off under Section 428 of Cr.P.C for the period already undergone by the accused.

4. Challenging the said conviction and sentence, the accused has filed the present appeal.

5. The learned counsel for the appellant has submitted that the victim girl was examined as P.W.2 and she has stated in her evidence that she was reading a book along with one Uma, at the time of occurrence, but, the said Uma was not examined. He further submitted that the victim girl also has deposed that after occurrence, when the victim girl came out of the accused's house, a person who is working in the Electricity Board has seen her, but, the said person also was not examined. He further submitted that there was an enmity between the accused and the P.W.1 with regard to the money transaction and hence, she has lodged a false complaint against the petitioner. He further submitted that the appellant has paid the fine amount on the date of judgment itself. He further submitted that the petitioner was remanded to Judicial custody on 06.08.2018 and from that date onwards he is in judicial custody. He further submitted that this Court has directed the petitioner/appellant by the order dated 18.02.2020 to deposit a sum of Rs.2,00,000/- to the credit of S.S.C.No.43 of 2016 on the file of the trial court. Accordingly, the petitioner has deposited the said amount before the trial court and he has also produced a xerox copy of the receipt to that effect. He further submitted that the accused is having a valid defence in the appeal and he is having a chance to succeed. He further submitted that there is no possibility of taking up the appeal for final hearing in the near future. Therefore, he prayed to suspend the sentence awarded by the trial court.

6. Per Contra, the learned Government Advocate (Crl.Side) has submitted that the victim girl has categorically deposed before the trial court that the petitioner has inserted his finger in her private part and Doctor also deposed that she noticed contusion in the private part of the victim girl. He further submitted that the petitioner has not even suggested before the defacto complainant (P.W.1) that there was an enmity between them with regard to money transaction and therefore, the contention of the accused that there was a motive for giving a false complaint against the accused is false. He further submitted that taking into consideration of the oral and documentary evidence adduced by the prosecution, the trial court has rightly convicted the accused/appellant and therefore, he opposed to suspend the sentence.



7. Considering the submissions made by the learned counsel for the accused/appellant that eventhough, the victim girl has deposed that the accused has called the victim girl, when she was reading a book with one Uma, the said Uma was not examined on the side of the prosecution and one EB official has also seen the occurrence, but, he was also not examined before the trial court and also the fact that the accused is in custody for a period of 1 year 5 months and 7 days and also the fact that as per the order of this court dated 18.02.2020, the appellant has deposited a sum of Rs.2,00,000/- before the trial court and hence, this court is inclined to suspend the sentence awarded by the trial court and directing the appellant to release on bail with the following conditions:-

(i) The appellant shall execute a bond for a sum of Rs.10,000/- with two sureties for like sum each, and that

(ii) The petitioner shall appear before the trial on the 1st working day of every month until disposal of the Criminal Revision Petition.

8. The Registry is directed to call for the records from both the courts below and post the matter on 21.04.2020.

-sd/-

13/03/2020

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 FAST TRACK MAHILA JUDGE
(SESSIONS), VELLORE VELLORE DISTRICT.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
AMBUR, VELLORE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE



5 THE SECTION OFFICER
CRIMINAL SECTION,
HIGH COURT, MADRAS

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+1 C.C. to M/S.M.SATHISH KUMAR Advocate on payment of necessary
charges SR.NO. 5014

Order

in
CRL MP.14833/2018

IN CRL.A.NO.700 OF 2018

Date :13/03/2020

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

RD 16/03/2020