



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty Eighth day of January Two Thousand Twenty

PRESENT

WEB COPY

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.122 of 2020

IN

CRL A(MD) No.368 of 2019

XAVIER @ CABLE XAVIER

... PETITIONER/PETITIONER

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO.15/2015

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed against the petitioner in Spl.S.C.No.10 of 2016 dated 27.06.2019 on the file of the Fast Track Mahila Court, Nagercoil and enlarge me on bail pending disposal of the Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.P.T.RAMESH RAJA, Advocate for the petitioner and of Mr.V.NEELAKANDAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner by the Fast Track Mahila Court, Nagercoil, in Spl.SC No.10 of 2016, dated 27.07.2019 and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on 16.05.2015, the accused, who is aged about 60 years old, took the victim minor child into his house and misbehaved with her by putting his finger into her private part and thereby causing bleeding injury.

3.The trial court on proper appreciation of the evidence, both oral and documentary, found the accused guilty, and convicted and sentenced him to undergo 7 years and 10 years rigorous imprisonment for the offences under Section 3(b) r/w 4 and 5(m) r/w 6 of the Protection of the Children from Sexual Offences Act, 2012 (POCSO Act) respectively and imposed a fine of Rs.5000/-, in default to undergo rigorous imprisonment of one year for each offence.



4.The learned counsel appearing for the petitioner submitted that the judgment of the trial court is based only on presumption and conjectures, which are not relevant to the circumstances of the case and the prosecution has not proved the place of occurrence and erred in convicting the petitioner without any substantial evidence and there are several infirmities in the prosecution case and there are contradictions in material particulars between the evidence of the prosecution witnesses and the petitioner is in jail since 27.06.2019. The learned counsel for the petitioner also submitted the order of this court made in **Crl.MP(MD)No.9749 of 2017 in Crl.A (MD)No.424 of 2017 (Vellaichamy Vs. State), dated 26.09.2018**, in support of his contention.

5.The learned Additional Public Prosecutor appearing for the respondent/State submitted that the trial court has rightly convicted the petitioner and there are enough materials available on record against the petitioner and there is no infirmity in the prosecution case and the earlier this court has dismissed the bail application filed by the petitioner in Crl.MP(MD)No.122 of 2019 in Crl.A(MD)No.368 of 2019 on 28.01.2020 and prays for dismissal of this petition.

6.However, considering the facts and circumstances of the case and the submission of both sides and considering the fact there are arguable points involved in this appeal and the petitioner has been in incarceration for more than six months, this court is inclined to allow Crl.MP(MD)No.122 of 2020 in Crl.A(MD)No.368 of 2019.

7.Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Fast Track Mahilar Court, Nagercoil and on further condition that the petitioner shall appear before the said court daily twice I.e., at 10.30 am and 5.00 pm, pending appeal.

sd/-
28/01/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE SESSIONS JUDGE,
FAST TRACK MAHALIR COURT,

<https://hcservices.mca.gov.in/hcservices/>
NAGERCOIL.



2.THE JUDGE,
FAST TRACK MAHILA COURT, NAGERCOIL.

3.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KANYAKUMARI DISTRICT.

4.THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTAI.

5.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S. P.T. RAMESH RAJA Advocate SR.No.1622

ORDER
IN
CRL MP (MD) No.122 of 2020
IN
CRL A (MD) No.368 of 2019
Date :28/01/2020

ER
JM/PN/SAR.1/28.01.2020/3P/7C