



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

Tuesday, the Twenty First day of July Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.2909 of 2020
IN
CRL A(MD) No.518 of 2019

VENKATESWARAN

... PETITIONER/APPELLANT

Vs

STATE REPRESENTED THROUGH
THE INSPECTOR OF POLICE,
THIRUPACHETTY POLICES STATION,
SIVAGANGAI DISTRICT.
CRIME NO. 115/2017.

... 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 of Imprisonment imposed by the Learned Mahila Fast Track Court, Sivagangai in Spl.S.C.No.10 of 2018 dated 25/09/2019 and enlarge the petitioner/ Appellant on bail, pending disposal of the above said Criminal Appeal and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.PRABHA, Advocate for the petitioner and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This criminal miscellaneous petition has been filed by the petitioner / appellant seeking to suspend substantive sentence of imprisonment imposed on him by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, by Judgment dated 25.09.2019 in Special S.C.No.10 of 2018.

2. This is the case of single accused. The petitioner / appellant was convicted for the offence under Sections 366(A), 506 (2) I.P.C. and Section 6 r/w Section 5(1) and Section 12 r/w Section 11(v) of POCSO Act, 2012.



3. The case of the prosecution is that the victim girl was minor on the date of occurrence i.e. 21.01.2017 and the petitioner / appellant had kidnapped the minor girl and took her to Tirupathi, where under threat he married the victim girl and then, he took her to many places and committed rape on the victim. In order to prove the case of the prosecution, P.Ws.1 to 7 were examined and Exs.P1 to P16 and M.O.1 were marked. On the side of the petitioner / appellant, D.W.1 was examined and no document and material object was marked.

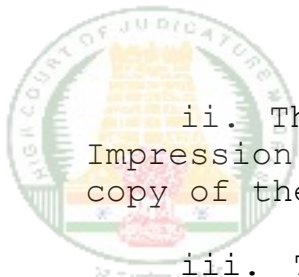
4. Ms.S.Prabha, learned counsel for the petitioner would argue that there is no ingredient to attract the provisions of Section 6 of POCSO Act. According to the learned counsel, only when there is aggressive penetration, the offence will attract and there is no evidence in this regard. It is further argued that the father of the victim girl lodged a complaint and in the said complaint, there is no allegation of kidnap by the petitioner / appellant. It is further submitted that P.W.1 returned on her own and gave a statement before the Police as well as the Judicial Magistrate to the effect that she went on her own and the Doctor also found no injury on the victim and there are arguable points available to the petitioner.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that this is a case of kidnapping of a minor girl and the petitioner / appellant has been convicted for the offence punishable under the provisions of POCSO Act. It is further submitted that the victim is already married and if this Court is inclined to suspend the substantive sentence of imprisonment, there is a possibility of the petitioner / appellant to disturb the victim / P.W.1.

6. In reply, the learned counsel for the petitioner, would submit that the petitioner / appellant undertakes that he will not disturb the victim / P.W.1, who is already married to some third party.

7. In the light of the above facts and circumstances, we find force in the submissions of the learned counsel for the petitioner. This Court is inclined to suspend substantive sentence of imprisonment. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Sivagangai.



ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioner shall appear before the learned Judicial Magistrate No.II, Sivagangai, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. The petitioner shall not disturb the victim / P.W.1 as per the undertaking given by the learned counsel for the petitioner.

v. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Committal Court on any other day, as determined by the Committal Court, in lieu of the day on which they would absent.

sd/-
21/07/2020

/ TRUE COPY /

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, SIVAGANGAI.
2. THE JUDICIAL MAGISTRATE NO II, SIVAGANGAI.
3. THE CHIEF JUDICIAL MAGISTRATE, SIVAGANGAI DISTRICT.
4. THE INSPECTOR OF POLICE,
THIRUPACHETTY POLICES STATION, SIVAGANGAI DISTRICT.
5. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.S.PRABHA Advocate SR.No.5796

ORDER IN
CRL MP(MD) No.2909 of 2020
IN
CRL A(MD) No.518 of 2019
Date :21/07/2020

krk/skn

<https://hccs.cer.gov.in/Services/2020/3P/8C>