



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

Wednesday, the Twenty Sixth day of August Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.4245 of 2019

IN

CRL A(MD) No.194 of 2019

KANNAN @ KURUVI KANNAN

... PETITIONER/APPELLANT

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
UMACHIKULAM POLICE STATION,
MADURAI DISTRICT
(IN CRIME NO.32/2014)

... 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 execution of sentence in Spl.S.C.No.7 of 2015 on the file of the Learned Sessions Judge, Mahalir Neethimandram, (FAC), Madurai, Madurai District in its Judgment dated 16.04.2019 and enlarge the petitioner on bail till the 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.A.PRASANNA RAJADURAI, Advocate for the petitioner and of Mr.K.DINESH BABU, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, (FAC), Madurai, in Spl.S.C.No.7 of 2015 dated 16.04.2019, till the disposal of the appeal.

2.The case against the petitioner is that on 16.01.2014, at 14.30 hours, when the victim and her sister were playing, the petitioner abducted the victim to his house and committed penetrative sexual assault on her. The case against the petitioner in Crime No.32 of 2014 was registered under Sections 366 (A) and 511 of IPC r/w. Section 6 of Prohibition of Children from Sexual Offences Act, 2012. The learned Sessions Judge, Mahalir



Neethimandrum found the petitioner guilty under Section 18 r/w. 6 of POCSO Act and Section 366 of IPC. The trial Court convicted the petitioner under Section 18 r/w 6 of POCSO Act and sentenced him to undergo five years rigorous imprisonment with a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo six months simple imprisonment and under Section 366 of IPC sentenced him to undergo five years rigorous imprisonment with a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo six months simple imprisonment. Against the conviction and sentence imposed by the trial Court, the petitioner has filed a criminal appeal and along with the appeal, he filed this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that no charge was framed under Section 18 r/w 6 of POCSO Act but the trial Court convicted the accused Section 18 r/w. 6 of POCSO Act. It is stated that the occurrence was alleged to have taken place on 16.01.2014. The complaint was lodged only on 17.01.2014. The FIR reached the Court only on 21.01.2014 and this delay was not explained by the prosecution. The earlier complaint filed by the complainant was suppressed by the Police. The person, who was alleged to have written the complaint, was not cited as a witness. There is contradiction between the evidence of P.W1 to P.W.4 regarding the occurrence. P.W.1 deposed that there is only an attempt for penetrative sex whereas P.W.2 and P.W.3 deposed that there was penetration. P.W.4 deposed that there was only oral sex. The occurrence was not proved by the prosecution. The statement of the victim was recorded under Section 161 of Cr.P.C., only after a year from the date of occurrence. The offence under Section 366 of IPC is not proved. There are much more points to be argued in the main appeal. The fine amount was also already paid. The petitioner is in custody for the past 1 ½ years and he have to look after his aged parents and prayed the petition to be allowed.

4.On the side of the prosecution, it is stated that the age of the victim is only 7 years and the age of the accused is 21 years. The statement of the victim was also recorded under Section 164 of Cr.P.C. All the procedures are scrupulously followed by the investigation authorities. The prosecution has examined 13 witnesses and marked 14 documents and five material objects and prayed the petition to be dismissed.

5.It is seen that since Section 511 of IPC is not applicable to POCSO Act, the learned Sessions Judge, Mahila Court has altered the charge as Section 18 r/w. 6 of POCSO Act. In the judgment, it is stated that the sufficient notice was issued to the petitioner. The petitioner is in custody for the past 1 ½ years. Considering the period of incarceration, this Court is inclined to grant suspension of sentence till the disposal of the appeal on the following conditions:

(i) the petitioner is directed to execute a bond

<https://hcservices.ecourts.gov.in/hcservices/> of Rs.10,000/- (Rupees ten thousand only)



with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram (FAC), Madurai District.

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their any valid identity proof to ensure their identity.

(iii) the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C., and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.

sd/-
26/08/2020

/ TRUE COPY /

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

TO

- 1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, (FAC), MADURAI,
MADURAI DISTRICT.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE,
UMACHIKULAM POLICE STATION, MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr.A.PRASANNA RAJADURAI, Advocate in SR.No.6136

ORDER
IN
CRL MP(MD) No.4245 of 2019
IN
CRL A(MD) No.194 of 2019
Date :26/08/2020

Mrn

<https://hcsmp.scribd.com/document/56082020> 3P 6C