



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Twenty Sixth day of August Two Thousand and Twenty

PRESENT

The Hon'ble Mrs.Justice R.THARANI

CRL MP(MD) No.3913 of 2020

IN

CRL A(MD) No.249 of 2020

POTTAIYAN @ VEERAAIAH

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE
ALANGUDI ALL WOMEN POLICE STATION,
PUDUKKOTTAI DISTRICT.
CR.NO.5 OF 2018.

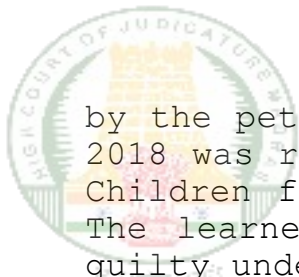
... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence and enlarge the petitioner on bail imposed on the appellant by the judgment dated 27/12/2019 made in Spl.S.C.No.22 of 2018 on the file of Mahila Court, Sessions Judge, Pudukkottai, 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 MR.SULTHAN BASHA for M/S.B.FAZIL KIRMANI, 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, Mahila Court, Pudukkottai, in Spl.S.C.No.22 of 2018 dated 27.12.2019, till the disposal of the appeal.

2. The case against the petitioner is that on 08.01.2018, at about 03.00 p.m., the petitioner offered a sum of Rs.15/- (Rupees Fifteen only) to the victim girl and took her to a garden and had intercourse with her and threatened her not to divulge the same to anybody else. On 05.07.2008, when the victim girl was examined by a doctor, the doctor's report came to know the offence committed



by the petitioner. The case against the petitioner in Crime No.5 of 2018 was registered under Section 5(j)(ii) r/w. 6 of Prohibition of Children from Sexual Offences Act, 2012 and Section 506(i) of IPC. The learned Sessions Judge, Mahila Court found the petitioner not guilty under Section 5(j)(ii) r/w. 6 of Prohibition of Children from Sexual Offences Act, 2012 and Section 506(i) of IPC but found the petitioner guilty under Section 5(l) r/w Section 6 of POCSO Act. The trial Court convicted the petitioner under Section 5(l) r/w 6 of POCSO Act and sentenced him to undergo ten years rigorous imprisonment with a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo one month 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 the DNA report clearly reveals that the petitioner is not the father of the victim's child. Except P.W.1 and P.W.2, other witnesses turned hostile. The petitioner was excluded from paternity in the DNA test. The evidence of D.W.1 also support the case of the petitioner. The report of DNA test was marked as Ex.D1. The victim is alleged to be a mentally retarded person. The identity of the petitioner through the victim will not be effective. It is stated that there are much more points to be argued in the main appeal. The petitioner is in custody from 27.12.2019 and prayed the petition to be allowed.

4. On the side of the prosecution, it is stated that the age of the victim is 17 years and the petitioner is aged about 47 years. 164 statement of P.W.2 was marked as Ex.P3. The accident register of the victim was marked as Ex.P7. The prosecution has examined eight witnesses and marked 11 documents and marked one material object. The case was proved by the prosecution beyond all reasonable doubts and prayed the petition to be dismissed.

5. It is seen that the petitioner is in custody from 27.12.2019 i.e., approximately eight months. 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 for a sum 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 Judicial Magistrate, Mahila Court, Pudukkottai.

(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.

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26/08/2020

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

TO

1. THE SESSIONS JUDGE,
MAHILA COURT,
PUDUKKOTTAI.
2. THE JUDICIAL MAGISTRATE,
MAHILA COURT,
PUDUKKOTTAI.
3. DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI.
4. THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY.
5. THE INSPECTOR OF POLICE,
ALANGUDI ALL WOMEN POLICE STATION,
PUDUKKOTTAI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.3913 of 2020 IN
CRL A(MD) No.249 of 2020
Date :26/08/2020

MRN
SRS/ PN/ SAR-II/ 26.08.2020/ 3P/7C