

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

Tuesday, the Ninth day of February Two Thousand Twenty One
PRESENT

The Hon`ble Mr Justice P. N. PRAKASH
and

The Hon`ble Mr Justice V. SIVAGNANAM

CRIMINAL MISCELLANEOUS PETITION No.2228 of 2020

IN CRL A.117/2020

DEENA DAYALAN

[APPELLANT/ACCUSED-12]

Vs

[RESPONDENT]

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
W-6, ALL WOMEN POLICE STATION,
AYANAVARAM, CEHNNAI-600 023.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.117 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the execution of sentence in Judgement dated 01.02.2020 made in SC NO.407/2018 by the Learned Sessions Judge, Special Court for exclusive Trial of cases under POCSO ACT, Chennai and enlarge the petitioner on bail pending disposal of the above CRL.A.117 OF 2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.117 OF 2020 on the file of the High Court and upon hearing the arguments of M/S.R.MOHANDOSS, Advocate for the petitioner and of MR. K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by V.SIVAGNANAM,J.)

This Criminal Miscellaneous Petition has been preferred seeking to suspend the execution of sentence imposed on the petitioner by judgment and order dated 01.02.2020 made in S.C.No.407 of 2018 on the file of the Sessions Court, (Special Judge for exclusive trial of cases under POCSO Act,) Chennai and to enlarge the petitioner on bail, pending disposal of the appeal.

2. The petitioner, who was A12 in S.C.No.407 of 2018 before the learned Sessions Judge, (Special Court for exclusive trial of cases under POCSO Act), Chennai was convicted and sentenced as follows:

S.L. No.	Provision under which convicted	Sentence
1.	Section 10 r/w 9 (g) of the POSCO Act	5 years rigorous imprisonment
2.	Section 506(I) r/w.34 IPC	2 years rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

3. Challenging the above conviction and sentences, the petitioner has filed Crl.A.No.117 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.R.Mohandoss, learned counsel for the petitioner and Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the petitioner submitted that there is no strong evidence against this petitioner/ (A12) and he was convicted and sentenced only for five years. He further submitted that the petitioner has been in custody from 01.02.2020 and pleaded to suspend the execution of sentence and grant bail.

6. The learned Additional Public Prosecutor objected to suspend the execution of sentence and to grant bail on the ground that the 11 year old victim girl clearly deposed against this petitioner/(A12) that he had made aggravated sexual assault on her.

7. We have considered the submissions of the learned counsel for both the parties and perused the materials on record. The petitioner/(A12) is involved in sexual assault of a 11 year old girl. The evidence of the victim girl is very clear to connect the petitioner with the offence. The trial Court believed the evidence of the victim girl and found the petitioner/A12 guilty of the aforesaid offences.

8. The learned counsel for the petitioner contended that the name of the petitioner did not figure in the initial stages of the investigation of the case and that the victim girl herself has stated that she was guided by the Magistrate in the Test Identification Parade. It must be remembered that, in this case, the victim girl was only 11 years old. She was sexually abused over a period of time by the accused herein. Each of them had taken advantage of her innocence at various times and had sexually abused her. Just because she did not reveal the name of the petitioner initially, it cannot be stated that her evidence should be rejected. That apart, while conducting Test Identification Parade, if the Magistrate had assisted a small girl who is 11 years old, it cannot be stated that she had tutored her. Further, in Sidhartha Vashisht Vs. State (NCT of Delhi) (2008) 5 SCC 230, the Supreme Court has held that the relief of suspension of sentence is not an automatic one and that the presumption that the accused is innocent, which is normally available for regular bail, is not available in the case of suspension of sentence and that the normal rule is jail and not bail.

9. Considering the nature of the offence, the manner in which the occurrence took place and the age and antecedents of the accused, we do not find any reason to suspend the execution of sentence and to grant bail.

In the result, this Criminal Miscellaneous Petition is dismissed.

-sd/-

09/02/2021

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 SESSIONS JUDGE
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UDER POCSO ACT, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
W-6, ALL WOMEN POLICE STATION,
AYANAVARAM, CEHNNAI-600 023.

4 THE SUPERINTENDENT,
CENTRAL PRISON-I, PUZHAL, CHENNAI

5 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT, MADRAS.

C.C. to M/S.R.MOHANDOSS Advocate on payment of necessary charges

Order
in
CRL MP.2228/2020
in
CRL A.117/2020

Date :09/02/2021

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

RVR 17/02/2021