

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Thirtieth day of April Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION NO.3939 OF 2020

IN CRL.A.NO.781 OF 2018

R.BABU

[PETITIONER / APPELLANT
ACCUSED]

Vs

STATE, REP. BY
INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DENKANIKOTTAI,
KRISHNAGIRI DISTRICT.
CRIME NO.13 OF 2016

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.781 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of conviction and imprisonment dated 22.10.2018 imposed by the learned Sessions Judge, Fast Track Mahalir Court at Krishnagiri in Spl.S.C.No.53/2016 and enlarge the petitioner on bail pending disposal of the CRL.A.NO.3939 OF 2020 [IN CRL.MP.NO.3939 OF 2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.781 OF 2018 on the file of the High Court and upon hearing the arguments of MR. R.SANKARASUBBU, Advocate for the petitioner and of M/S.V.SARATHA DEVI, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The convicted accused is the revision petitioner herein.

2. The above criminal appeal is filed against the conviction and sentence passed in Spl.S.C.No.53 of 2016 by the Sessions Judge, Fast Track Court, Mahila Court, Krishnagiri, dated 22.10.2018 since then, the petitioner herein is incarceration.

3. (i) The complainant is the father of victim and he lodged a complaint with the respondent police. The First Information Report was registered against the appellant for the offences punishable under Sections 9 (k) r/w 10 of Protection of Child from Sexual Offences Act, 2012 and subsequently it has been altered into Sections 451 I.P.C and Sections 6 r/w 5 (k) and (I) and (i), 10 r/w 9 (k) and (i) of Protection of Child from Sexual Offences Act,

(ii). The case of the prosecution is that the appellant committed the aggravated penetrative sexual assault and on 26.08.2016 evening when the victim girl Kamachi was in the house, the appellant criminally trespassed into the house of the witness Kathirappa and pushed down the victim girl Kamatchi and pressed and sucked the breasts of her and voluntarily committed aggravated sexual assault.

(iii) The prosecution examined 17 witnesses, marked 22 exhibits and 1 material object.

(iv) The learned Sessions Judge, Fast Track Mahalir Court at Krishnagiri found the appellant/accused guilty. The trial Court passed the judgment dated 22.10.2018 in Spl.S.C.No.53/2016 and sentenced the appellant/accused to undergo rigorous imprisonment of 10 years for the offences punishable under Section 450 of I.P.C and to pay a fine of Rs.2500/-, on failure to pay the fine amount to undergo one year rigorous imprisonment; sentenced the appellant/accused to undergo rigorous imprisonment of 10 years for the offences punishable under Sections 5 (k) (1) r/w 6 of Protection of Child from Sexual Offences Act, 2012 and to pay Rs.2500/-, on failure to pay the fine amount to undergo one year rigorous imprisonment; sentenced to undergo 5 years rigorous imprisonment for the offence under Sections 9 (k) r/w 10 of Protection of Child from Sexual Offences Act, 2012 and to pay Rs.1000/- on failure to pay the fine amount to undergo 10 months rigorous imprisonment.

4. This is the third application seeking the suspension of sentence.

5. Mr.Sankarasubbu, the learned counsel has relied upon the evidence of P.W.2, P.W.3 and P.W.6.

6. Heard Mrs.Saratha Devi, learned Public Prosecutor (Crl.Side) appearing for the respondent-police.

7. After perusing the evidence of P.W.1-Kathirappan/father, P.W.2 Muniamma-mother and also the evidence of the victim girl P.W.6). P.W.16 -Parimala Devi -Doctor who deposed regarding the medical examination. The deposition of P.W.7 namely the interpreter- Varalakshmi has been circulated today.

8. After going through the evidence of P.W.16 Doctor coupled with the version of victim girl-P.W.6, I find that the submission made by the learned counsel for the appellant/petitioner cannot be countenance. The victim girl is 14 years and is mentally disordered. P.W.6 (victim girl) has deposed, despite being mentally disordered the act of the accused on her body. The interpreter has given a clear interpretation of the words spoken to by the P.W.6 and hence, I find that the medical evidence of Doctor P.W.6 duly corroborated prosecution theory.

9. No doubt true that the petitioner is in incarceration for 3 years. However taking note of the evidence of victim girl P.W.6 coupled with the medical evidence of P.W.16 and the defendant of the offence as stated under Section 9(A) of the Prosecution Act, the learned Sessions Judge has rendered a finding and hence I find that taking into consideration the legal presumption attached to the medical of the prosecution case attached the nature of the witnesses, I find that I am inclined to grant the suspension of sentence. At this juncture since the petitioner/accused is in incarceration for nearly 3 years, the Registry is directed to get ready with the typed set of papers and post the Criminal Appeal for final disposal on 06.08.2021.

10. Accordingly, this Criminal Appeal is dismissed.

-sd/-
30/04/2021

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,
FAST TRACK MAHALIR COURT,
KRISHNAGIRI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DENKANIKOTTAI,
KRISHNAGIRI DISTRICT.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

+1C.C. to M/S PALANIVEL Advocate on payment of necessary charges SR.NO.5726

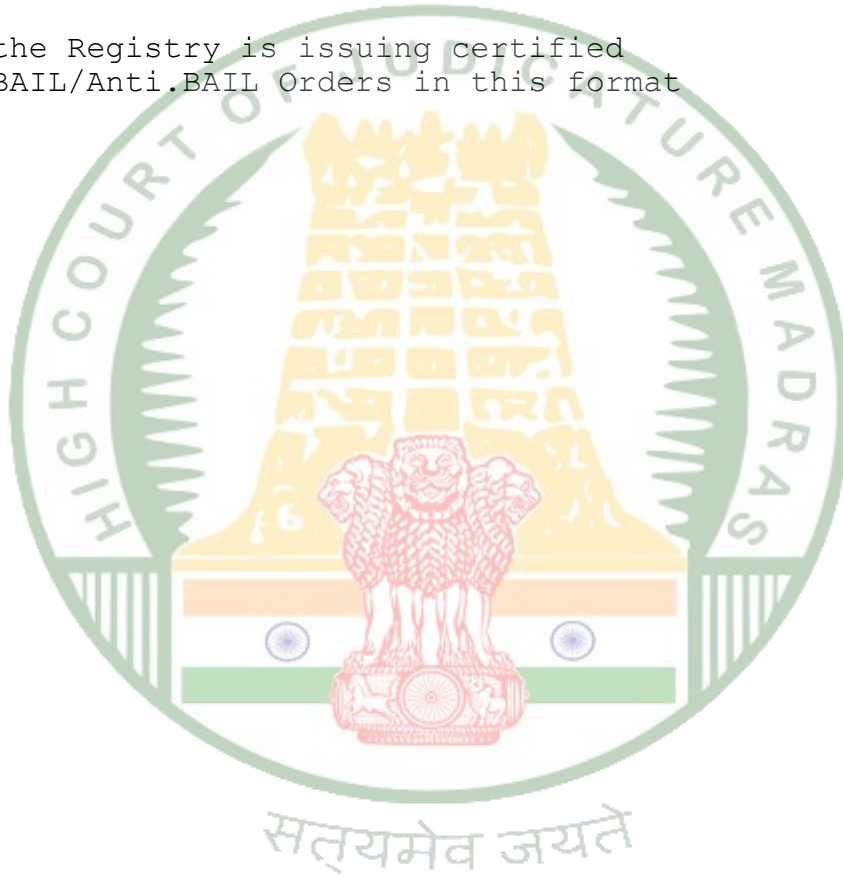
Order

in
CRL.MP.NO.3939/2020
in
CRL.A.NO.781/2018

Date :30/04/2021

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

MK:20/05/2021



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