

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.5333 of 2021

in

Crl.A.No.193 of 2021

G.Arulpandi

.. Petitioner/A1

Vs.

State through its
Inspector of Police,
Mohanur Police Station.
Namakkal District.
(Crime No.411 of 2013)

... Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C. Read with Section 439 Cr.P.C., to suspend the sentence imposed on the petitioner by judgment and order dated 03.12.2020 passed in Spl.CC.No.6 of 2015 on the file of the learned Sessions Judge (Fast Track Mahila), Namakkal and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.R.Muniyapparaj
Government Advocate (Crl.Side)

O R D E R

(Order of the Court was made by R.PONGIAPPAN, J.)

This criminal miscellaneous petition has been preferred by Accused No.1, seeking to suspend the sentence imposed on him, by judgment and order dated 03.12.2020 passed in Spl.CC.No.6 of 2015 on the file of the learned Sessions Judge (Fast Track Mahila), Namakkal and to enlarge him on bail pending disposal of the appeal.

2. The case of the prosecution is that during the relevant point of time, the petitioner/Accused No.1 viz., G.Arulpandi used to follow the victim girl and gradually developed a love affair and also by taking advantage of the tender age, he enticed the victim girl with an intent to exploit her sexually. Prior to 06.09.2013, on many occasions, the petitioner/Accused No.1 went to the house of the victim girl and committed aggravated penetrative sexual assault on her. Ultimately, on 06.09.2013, at about 11.00pm, the accused came to the house of the victim girl and kidnapped her from the lawful guardianship of her parents with an intention to marry her and accordingly, committed the offence punishable under Sections 363 and 366 of IPC and under Section 5(1) r/w 6 of the POCSO Act, 2012.

3. For the said offence, initially, a case has been registered against petitioner/Accused No.1 and nine others in Crime No.411 of 2013. Thereafter, after completing the investigation, charge sheet has been filed against this petitioner/Accused No.1 under Sections 363 and 366 of IPC and under Section 5(1) r/w 6 of the POCSO Act, 2012. Other accused viz., A2 to A9 were charged under Section 363 r/w 109 IPC.

4. After concluding the trial, the petitioner/Accused No.1, was convicted under Section 5(1) r/w 6 of the POCSO Act, 2012 and sentenced to undergo imprisonment for life and to pay a sum of Rs.1,000/- as fine, in default to undergo six months simple imprisonment. Further, he was convicted of the offence under Section 363 of IPC and sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.1,000/- as fine, in default to undergo six months simple imprisonment. Petitioner/accused No.1 was also convicted of the offence under Section 366 of IPC and sentenced to undergo seven years rigorous imprisonment and to pay a sum of Rs.1,000/- as fine, in default to undergo six months simple imprisonment.

5. Challenging the above conviction and sentence, the petitioner/Accused No.1, has filed CrI.A.No.193 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

6. Heard Mr.R.Vivekananthan, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (CrI.Side) appearing for the respondent/State.

7. Mr.R.Vivekananthan, learned counsel for the petitioner/Accused No.1 would contend that the evidence given by the victim girl has lot of contradictions. The occurrence narrated by the victim girl is unnatural and unbelievable. It cannot be said that the alleged occurrence had happened continuously for 50 days in a particular place, which is situated near the victim's house.

Further, the evidence given by PW3 in respect of the abortion creates a doubt whether the alleged occurrence had happened or not. According to him, the evidence let in by the prosecution did not prove their case beyond reasonable doubt.

8. Per contra, Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side), appearing on behalf of the respondent would submit that the evidence given by the victim girl is sufficient to hold that at the time of occurrence, by using the tender age of the victim girl, the petitioner/accused No.1 exploited her and made sexual assault. According to him, the findings arrived at by the trial Court do not need interference.

9. Now, on considering the rival submissions made by the learned counsel on either side, it is true, that at the time of giving evidence as PW3, the victim girl has stated that during the time of occurrence, continuously for 50 days, petitioner/Accused No.1, in night hours, came to her house and had sexual relationship with her. In this regard, as to the probability of the said occurrence, the evidence given by PW3 needs a detailed appraisal. More than that, the statement recorded from the victim girl under Section 164 Cr.P.C., is having some contradictions with the deposition. Therefore, the same also requires a detailed appraisal.

10. Further, it is true, the period of the first incident was not duly identified by the prosecution and therefore, only on a detailed appraisal, we have to find out the truthfulness of the prosecution case.

11. Moreover, the petitioner/Accused No.1, has been under incarceration from 03.12.2020 onwards and the present appeal is not likely to be taken up in the near future. In such a view of the matter, this Court is of the view that the petitioner/Accused No.1, is entitled to the relief of suspension of sentence and bail.

12. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge (Fast Track Mahila), Namakkal.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and

(iii) The petitioner shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every 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/-

16/06/2021

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 MAHILA),
NAMAKKAL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
MOHANUR POLICE STATION,
NAMAKKAL DISTRICT.

+1 C.C. to M/S.R.VIVEKANANTHAN Advocate on payment of necessary charges SR.No.6523

Order
in
CRL MP.5333/2021
in
CRL.A.193/2021

Date :16/06/2021

From 7.2.2001 the Registry is issuing certified
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