

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.5803 of 2021

in

Crl.A.No.249 of 2021

Duraisingham

.. Petitioner/sole accused

Vs.

State through its
The Inspector of Police,
All Women Police Station North,
Tiruppur.
(Crime No.8 of 2017)

.. 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 upon the petitioner by judgment and order dated 28.09.2018 passed in Spl.S.C.No.31 of 2017 on the file of the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruppur, and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.A.L.Namashivayam

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

ORDER

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

This criminal miscellaneous petition has been preferred, seeking to suspend the sentence imposed upon the petitioner, by judgment and order dated 28.09.2018 passed in Spl. S.C.No.31 of 2017 on the file of the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruppur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that on 08.03.2017, when the witness Maheswari and her husband, who are the parents of the victim

girl went out to attend their work, the victim girl and her brother Pandidurai alone were at home. At about 2.00 pm, the accused took the victim girl to the half constructed building near his house, hugged her, placed his male organ into her mouth and asked her to suck the same. The accused also penetrated his finger into her vagina and sexually harassed her and further, the same was continued regularly.

3. On 18.03.2017, at about 2.00 pm, when the accused called the victim girl for the same purpose, the victim refused and so, the accused caused criminal intimidation on her to do away with her, if she discloses about the occurrence to anybody. For the said occurrence, a case has been registered against the petitioner/accused in Crime No.8 of 2017, on the file of the All Women Police Station North, Tiruppur, under Sections 5(1) and (n) read with Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and Section 506 IPC.

4. After concluding the trial, by judgment dated 28.09.2018, the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruppur, came to the conclusion that the petitioner/accused is guilty under Section 5(1) read with Section 6 and Section 5(n) read with Section 6 of the POCSO Act, 2012 and convicted and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- for each of the offences. In default of payment of fine, the petitioner/accused was sentenced to undergo additional rigorous imprisonment for one year, for each of the above offences.

5. Challenging the above conviction and sentence, the petitioner/accused, has filed Crl.A.No.249 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

6. Heard Mr.A.L.Namashivayam, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side) appearing for the respondent/State.

7. Mr.A.L.Namashivayam, learned counsel appearing for the petitioner/accused would contend that the petitioner/accused has been under incarceration from 29.01.2018 onwards. In respect of the registration of the case, the evidence given by the de facto complainant and the evidence given by the victim girl is contradictory in nature. The FIR pertaining to this occurrence has been registered with a considerable delay and for the said delay, the prosecution witnesses have not given any reasonable explanation. He would further contend that the evidence given by the victim girl is having lot of contradictions, which affect the root of the prosecution case and accordingly, he prayed to allow this petition.

8. Per contra, Mr.R.Muniyapparaj, the learned Government Advocate (Crl. Side) appearing for the respondent would contend that

the victim girl in this case is aged about 13 years. Being the friend of the victim girl's father, the petitioner/accused, visited the house of the victim girl regularly and using the said opportunity, when the parents of the victim girl had gone out, the petitioner/accused committed the said offence. According to him, the offence committed by the petitioner is heinous in nature. Further, the evidence given by the victim girl in respect of the charge framed against the petitioner/accused is very clear. According to him, if the petitioner/accused is released on bail, he may attempt to escape from the clutches of law.

9. The rival submissions made by the learned counsel on either side, are considered. It is true, during the time of occurrence, the victim girl viz., Vaijayanthi, was aged about 13 years. Before the trial Court, the victim girl was examined as PW1 and during such time, she has narrated the occurrence, as alleged by the prosecution. Even assuming that the evidence given by the victim girl and the de facto complainant, is having some minor contradictions, those are all not in the form of affecting the case of the prosecution. Since the victim girl and the de facto complainant were examined before the Court, after a long gap from the date of occurrence, it is natural on their part to give some contradictory evidence. However, the same should be appraised only during the time of arguments in the appeal.

10. The mere fact that during the trial, the petitioner/accused was granted bail and there was no allegation of misuse of liberty, is really not of much significance. Further, the same does not per se warrant suspension of execution of sentence and grant of bail.

11. Therefore, we are of the opinion that though the petitioner/accused has been under incarceration from 28.09.2018 onwards, considering the gravity of the offence committed by the petitioner/accused, we are of the opinion that this is not a fit case to suspend the sentence of imprisonment and grant bail to the petitioner/accused.

12. In the result, this criminal miscellaneous petition is dismissed. The Registry is directed to call for the records, prepare the typed set of papers immediately and list the main appeal for final hearing in the month of August 2021.

-sd/-
21/06/2021

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,
MAGALIR NEETHI MANDRAM,
FAST TRACK MAHILA COURT,
TIRUPPUR

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION NORTH,
TIRUPPUR.

4 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

COPY TO:

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

C.C. to M/S.A.L.NAMASHIVAYAM Advocate on payment of necessary charges

Order
in
CRL MP.5803/2021
in

Cr1.A.No.249 of 2021

Date :21/06/2021

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RVR 29/06/2021