



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

Wednesday, the Fourteenth day of July Two Thousand Twenty One

WEB COPY

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.6252 of 2021

IN CRL.A.No.301 of 2021

GOPI

[PETITIONER / APPELLANT /
ACCUSED]

Vs

STATE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
JAYANKONDAM,
ARIYALUR DISTRICT.
CRIME NO.9/2017

[RESPONDENT / RESPONDENT /
COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.301/2021 on the file of the High Court, the High Court will be pleased to suspend the sentence of Rigorous Imprisonment for Life term and payment of Fine amount of Rs.10,000/- imposed on the petitioner by the Judgment dated 30.01.2020 by the Learned Sessions Judge, Fast Track Mahila Court at Ariyalur in Special Sessions Case No.17/2018 and enlarge the petitioner on bail pending disposal of the Crl.A.No.301/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.301/2021 on the file of the High Court and upon hearing the arguments of M/S.R.KARUNAKARAN, Advocate for the Petitioner and of M/S. R.MUNIYAPPARAJ, Government Advocate (crl.side) on behalf of the Respondent the court made the following order:-

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

This criminal miscellaneous petition has been preferred by the accused seeking to suspend the sentence imposed upon him, by judgment and order dated 30.01.2020 passed in Spl.S.C.No.17 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court at Ariyalur and to enlarge him on bail pending disposal of the appeal.



2. The petitioner, who is the sole accused in Spl.S.C.No.17 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court at Ariyalur, was convicted of the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo Life imprisonment along with fine of Rs.10,000/-, in default, simple imprisonment for one year.

3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.301 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.R.Karunakaran, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the respondent/State.

5. The case of the prosecution is as follows:

(i) On 11.05.2017 at about 15.00 hours, when the victim went to pickup chappal kept behind her house, the petitioner/accused took her to his home and caused sexual assault and so the victim sustained injury on her private part. Since the victim is mentally retarded, she could not narrate the occurrence, but pointing out her private part by gesture, she explained to her mother and witnesses Nandhini and Sumathi that the petitioner/accused, caused it.

(ii) The further case of the prosecution is that, on the date of occurrence, the victim cried at 10.00pm, as she suffered to answer nature's call and so her mother, on looking at her private part came to know that she had been sexually assaulted and so she showed to relatives and neighbours and enquired the petitioner/accused at his home. The petitioner/accused used abusive words against the complainant and threatened her that if she create a problem, he would take away her head. Hence, the petitioner/accused has committed the offence stated supra.

6. The learned counsel appearing for the petitioner/accused would submit that the victim is not in a position to adduce any oral evidence due to her mental condition. The entire case of the prosecution, relies upon circumstantial evidence. Further, the evidence given by PW2 to PW5, are all hearsay evidence. According to him, the evidence of prosecution cannot be construed as forming part of the same transaction under Section 6 of the Indian Evidence Act. He would further add that the opinion given by the Doctors cannot be taken as a proved fact and further, previous bad character of accused is irrelevant under Section 54 of the Indian Evidence Act. According to him, in the absence of any rebuttal evidence, the Court act upon from the available evidence on the side of the accused. Further, the



petitioner/accused has been under incarceration from 30.01.2020. Therefore, the suspension of sentence will have to be granted.

7. Mr.R.Muniyapparaj, the learned Government Advocate (Crl. Side) appearing for the State submitted that the conviction has been rendered placing reliance upon the evidence of PW1 and PW2. PW1, is a mentally retarded women. Further, the petitioner/accused is grandfather figure in the neighbourhood of PW1. After knowing the status of victim girl, by utilizing the same, the petitioner/accused had committed the said offence. The judgment rendered by the trial Court is very clear that the offence committed by the petitioner/accused is heinous one. Thus, this petition requires to be dismissed.

8. Considering the submissions made, we are of the view that before considering the prayer sought by the petitioner/accused, it is necessary to look into the gravity of the offence committed by the petitioner/accused. In respect to the evidence given by PW1, the trial Court has narrated the situation, which arose at the time of recording the evidence from the victim girl, as follows:

"8. "X" is PW1, the victim who is mentally retarded on seeing the accused in the open court got down from the waist of her mother and her face changed in fear on seeing him and she pointed out accused and placed her hand on her private part and kept her hand on her mouth by gesture explained what happened to her and on questioning whether she was afraid to look at accused she indicated yes by gesture."

9. Therefore, the said circumstances would show that the victim girl is always under fear, even after a long gap from the date of occurrence. More than that, being the grandfather figure to the victim girl, the petitioner/accused aged about nearly 42 years, had committed this offence and such act is inhumane. Therefore, if these type of persons are enlarged on bail, they would attempt to escape from the clutches of law.

10. In the above said circumstances, it is necessary to see, the judgment in Vijayakumar Vs. Narendra and others, reported in 2002 (9) SCC 364, wherein the Hon'ble Apex Court has held as follows:

"... in considering the prayer for bail in a case involving serious offences, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of offence, and the desirability of releasing the accused on bail after they have been convicted for committing serious offence of murder."



11. Therefore, the legal position is very clear that the power of this Court to suspend the order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, but, its exercise should be limited to very exceptional cases. Merely because of the reason that the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.

12. Therefore, applying the principles set out in the above referred judgment, we are of the opinion that though the petitioner/accused has been under incarceration from 30.01.2020 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.

13. 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 appeals for final hearing in the month of September 2021.

-sd/-
14/07/2021

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 COURT
AT ARIYALUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY AS CONVICT PRISONER
C.T.NO.23387



3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
JAYANKONDAM,
ARIYALUR DISTRICT.

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

+1 C.C. to M/S.R.KARUNAKARAN Advocate on payment of necessary
charges SR.No.7383

Order

in
CRL MP.6252/2021

in
CRL.A.301/2021

Date :14/07/2021

From 7.2.2001 the Registry is issuing certified
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