

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Second day of July Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. VELMURUGAN

CRIMINAL MISCELLANEOUS PETITION No.6605 of 2021

IN CRL.A.No.328 of 2021

A.ARUNACHALAM

[PETITIONER / ACCUSED]

Vs

STATE OF TAMILNADU REP.BY
INSPECTOR OF POLICE,
ALL WOMENS POLICE STATION,
OMALUR,
SALEM DISTRICT.

[RESPONDENT / COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.328/2021 on the file of the High Court, the High Court will be pleased to suspend the execution of the sentence dated 26.02.2021 passed in New Special Sessions case No.109/2019 (Old Special Sessions Case No.65/2018) against the petitioner/appellant/accused by the on the file Special Sessions Judge, Special Court under POCSO ACT, Salem and enlarge the appellant on bail pending disposal of the above Crl.A.No.328/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.328/2021 on the file of the High Court and upon hearing the arguments of M/S.S.SUNDAR, Advocate for the Petitioner and of M/S. S.SUGENDRAN, Government Advocate (crl.side) on behalf of the Respondent the court made the following order:-

This petition has been filed seeking to suspend the execution of sentence imposed on the petitioner by judgment dated 26.02.2021 in New Special Sessions Case No.109 of 2019 (Old Spl.S.C.No.65 of 2018) on the file of the learned Special Sessions Judge, Special Court under POCSO Act, Salem and enlarge the appellant on bail.

2. The learned counsel for the petitioner would submit that there is no such occurrence taken place as alleged by the prosecution. The appellant is the relative of the victim girl's family, at time of occurrence i.e on 28.04.2018 the appellant went to the house of the victim girl for collecting over due of the chit amount and in order to escape from the clutches of the chit amount, P.W.1/mother of the victim girl filed a false complaint against the appellant. The Doctor, one who examined the victim girl has stated that there was no injury or symptoms for aggravated penetrative sexual assault on the victim girl and hence, the medical evidence is not supported the case of the prosecution. However, the trial Court failed to appreciate the entire evidence and wrongly convicted and sentenced the petitioner and now he is in custody. Therefore, he prays to grant suspension of sentence to the petitioner.

3. The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl was aged about 7 years, who was sleeping in her house, the appellant trespassed into her house and had committed penetrative sexual assault on the victim girl. The grand mother, who was in the next door, after seeing that the appellant escaped from that place and the independent witnesses also supported the case of the prosecution. Further, the Doctor, who examined the victim girl has opined that there was no injury on the part of the victim girl, however, the prosecution has proved its case beyond all reasonable doubts. He would further submit that if suspension of sentence is granted, the appellant will try to escape from the case and hence, he strongly opposes to grant suspension of sentence to the appellant.

4. Heard the learned counsel on either side and perused materials available on record.

5. It is seen from the records that at the time of occurrence, the victim girl, was aged about 7 years and she has clearly narrated the said incident. There is a substantive overtact attributed against the petitioner and the trial Court, after considering the entire materials, found that the accused committed the charged offence and rightly convicted and sentenced the petitioner. Hence, there is no ground made out to grant suspension of sentence to the petitioner.

6. In the light of the above submissions made by the learned counsel on either side, this Court finds that no prima facie ground is made out to grant suspension of sentence to the petitioner. Considering the serious nature of the offence committed by the petitioner under POCSO Act, this Court is not inclined to grant suspension of sentence to the petitioner.

7. Accordingly, this miscellaneous petition is dismissed.

-sd/-
02/07/2021

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 SPECIAL SESSIONS JUDGE,
SPECIAL COURT UNDER POCSO ACT,
SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMENS POLICE STATION,
OMALUR, SALEM DISTRICT.

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

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

सत्यमेव जयते
Order

in
CRL MP.6605/2021

in
CRL.A.328/2021

Date :02/07/2021

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