

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Fifth day of June Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. VELMURUGAN

CRIMINAL MISCELLANEOUS PETITION No.6466 of 2021

IN CRL.A.NO.318 of 2021

VELAYUDHAM

[APPELLANT/ACCUSED]

Vs

STATE BY
THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
TIRUPPUR SOUTH,
TIRUPPUR.
CR.NO.8/2019.

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed on the petitioner in S.S.C.No.45 of 2019 on the file of the Sessions Judge Mahalir Neethimandram (Fast Track Mahila court), Tiruppur dated 15.04.2021 and release the petitioner on bail pending disposal of the above Crl.A.No.318 of 2021.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.J.FRANKLIN, Advocate for the petitioner and of MR.S.SUGENDRAN, GOVERNMENT ADVOCATE [CRL. SIDE] on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in S.S.C.No.45 of 2019, on the file of the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Tiruppur, dated 15.04.2021 and release the petitioner on bail.

2.. The respondent-Police have registered a case against the petitioner in Crime No.8 of 2019, for the offence under Section 9 (m) r/w 10 of Protection of Children from Sexual Offences Act, 2012.

3. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned trial Judge found the accused guilty for the offence under Section 9(m) r/w 10 of the POCSO Act and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default, to undergo additional rigorous imprisonment for one year.

4. Challenging the said Judgment of conviction and sentence, the petitioner / accused has preferred the appeal along with this Petition, seeking to suspend the sentence.

5. The learned counsel for the petitioner would submit that the petitioner is none other than the grandfather of the victim child and there was a civil dispute between the petitioner and the father of the victim child and therefore, in order to take vengeance, the father of the victim child, foisted a false case against the petitioner and tutored the victim child and therefore, the victim child has spoken as tutored by the father of the victim. Though the victim child has stated that soon after the occurrence, she informed to her brother and subsequently, informed his father, whereas during the statement recorded under Section 164 (5) of Cr.P.C., the victim girl has not stated that soon after the occurrence, initially, she informed to her brother and subsequently informed to her father and further, the father of the victim child was not examined as a witness. He would further submit that the trial Court failed to appreciate the entire evidence, and wrongly convicted and sentenced the petitioner and therefore, the learned counsel prays to grant suspension of sentence to the petitioner.

6. The learned Government (Criminal Side) appearing for the respondent-Police would submit that the victim child was 10 years old at the time of occurrence, and when the victim was in the house of the accused, the accused committed sexual assault over the victim child by rubbing over her breasts and left his hand into her panty, placed her hand over her vagina and sexually assaulted the victim child. After her father returned home, she informed the occurrence to her father and thereafter, a complaint was registered and after enquiry, the Police registered the case for the offence under Section 9 (m) r/w 10 of POCSO Act, and filed a charge sheet. The learned Judge, after considering the facts, rightly convicted the petitioner for the offence under Section 9 of POCSO Act, which is punishable under Section 10 of the POCSO Act, and if the petitioner is released on bail, there is a possibility of the tampering the witnesses and therefore, the learned Government Advocate (Crl.Side) strongly objects the petition.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the materials placed on record.

8. In this case, the victim child was examined as P.W.1 and she has clearly narrated the entire facts regarding the sexual assault made by the petitioner. Further, it is seen from the records that at

the time of occurrence, the victim girl was aged about 10 years. There is a substantive overt act attributed against the petitioner and the trial Court, after considering the entire materials, found that the accused committed offence and convicted and sentenced the petitioner. There is no ground made out to grant suspension of sentence to the petitioner.

9. Considering the serious gravity of the offence committed by the petitioner under POCSO Act, this Court is not inclined to grant suspension of sentence to the petitioner.

10. Accordingly, this miscellaneous petition is dismissed.

-sd/-
25/06/2021

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, MAHALIR NEETHIMANDRAM,
(FAST TRACK MAHILA COURT) TIRUPPUR.

2 THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
TIRUPPUR SOUTH,
TIRUPPUR.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE. सत्यमेव जयते

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

WEB COPY

Order
in
CRL MP.6466/2021
in
CRL A.318/2021

Date :25/06/2021

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