



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Third day of August Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Ms Justice R.N. MANJULA

CRIMINAL MISCELLANEOUS PETITION No.6801 of 2021

IN CRL.A.NO.342 OF 2021

THANGAVEL

[PETITIONER/APPELLANT]

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
MADUKKARAI POLICE STATION,
ALL WOMEN POLICE STATION,
PERUR SUB-DIVISION,
PERUR, COIMBATORE CITY.
CR.NO.169 OF 2017.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.NO.342 OF 2021 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the Spl.C.C.No.28 of 2019 dated 28.04.2021 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and enlarge the petitioner on bail pending disposal of the above Crl.A.NO.342 OF 2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A No.342 on the file of the High Court and upon hearing the arguments of M/S. B.KUMARASAMY, Advocate for the Petitioner, and of MR.R.MUNIYAPPARAJ, Government Advocate (Crl. Side) on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by P.N.PRAKASH,J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 28.04.2021 passed in Spl.C.C.No.28 of 2019 on the file of the Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO



Act”), Coimbatore and to enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner faced trial in Spl.C.C.No.28 of 2019 before the Special Court for Cases under the POCSO Act, Coimbatore, in which, the Sessions Judge, by judgment and order dated 28.04.2021, convicted and sentenced the petitioner as follows:

Provision under which convicted	Sentence
Section 5(m)(n) r/w 6 of the POCSO Act	Life imprisonment, which shall mean imprisonment for the remainder of his natural life and fine of Rs.60,000/-, in default to undergo one year rigorous imprisonment.

3. Challenging the above conviction and sentence, the petitioner has filed Crl.A.No.342 of 2021 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

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

5. It is the case of the prosecution that the victim girl “X” (PW2) (name not disclosed for the sake of anonymity) was nine years and the petitioner was forty eight years at the time of incident viz., 27.05.2017. It is the further case of the prosecution that Kalirathinam (PW1), mother of “X” (PW2), had left “X” (PW2) in the house of her relative Sivaranjani (PW4) and had gone out with the latter; while “X” (PW2) was alone in the house, the petitioner is said to have entered into the house and sexually abused her.

6. The learned counsel for the petitioner took us through the evidence of “X” (PW2) and submitted that even before the registration of FIR (Ex-P10) on 27.05.2017, the police have come to the place of occurrence and therefore, the FIR (Ex-P10) stands vitiated. He drew the attention of this Court to the evidence of Sivaranjani (PW4), who had turned hostile to the prosecution case, and who, in her cross-examination, has stated that no such incident have ever taken place. He further submitted that Sureshkumar (PW3), father of “X” (PW2), is involved in two murder cases and he is an unreliable witness.

7. *Per contra*, the learned Government Advocate (Crl.Side) refuted the aforesaid submissions.

8. While dealing with a petition for suspension of sentence and bail, this Court cannot appreciate the evidences of the prosecution witnesses as is done in an appeal.

9. We gleaned through the evidence of “X” (PW2), wherein, she has stated as to how the petitioner slyly entered into the house, while she was alone and ravished her. The incident had taken place on 27.05.2017 and “X” (PW2) was examined-in-chief on 14.02.2019 nearly two years later. “X” (PW2) was not cross-examined on the same day and



she was recalled and cross-examined on 26.03.2019.

10. Just because "X" (PW2) has stated in the cross-examination that the police had come in the evening would not by itself make her allegations suspect. That apart, the involvement of Sureshkumar (PW3) in murder cases can also not affect the testimony of "X" (PW2) in a case of this nature.

11. The learned counsel for the petitioner submitted that "X" (PW2) was taken to a nearby doctor, who was not examined and consequently, there is a violation of Section 164-A Cr.P.C.

12. We are not able to countenance the above submission since after the registration of the FIR (Ex-P10), "X" (PW2) has been subjected to medical examination by a Government Doctor. Just because the distraught parents had taken "X" (PW2) to a nearby doctor that by itself would not vitiate the prosecution case.

13. The learned counsel for the petitioner further submitted that there is a delay in recording the statements of "X" (PW2) by the police.

14. The above submission, in our opinion, at the most, can be construed as remissness in the investigation. The effect of it has to be seen only in the final disposal of the case.

In fine, this criminal miscellaneous petition stands dismissed as being devoid of merits.

-sd/-
03/08/2021

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 COURT FOR EXCLUSIVE
TRAIL OF CASES UNDER POSCO ACT,
COIMBATORE.

2 THE INSPECTOR OF POLICE,
MADUKKARAI POLICE STATION,
ALL WOMEN POLICE STATION,
PERUR SUB-DIVISION, PERUR,
COIMBATORE CITY.



3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S. B.KUMARASAMY Advocate on payment of necessary
charges SR.NO.8110

Order

in
CRL MP.6801/2021
in
CRL A.342/2021

Date :03/08/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

INBA 06/08/2021