



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty First day of December Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.11882 of 2021

in

Crl.A.No.564 of 2021

GANAPATHI

[PETITIONER/APPELLANT/SOLE ACCUSED]

Vs

THE STATE REP.BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,

TIRUTTANI ALL WOMEN POLICE STATION,

TIRUVALLUR DISTRICT.

CR.NO.02/2018.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence passed in Judgment in Spl.S.C.No.78/2018 dated 11.10.2021, by the Hon'ble Sessions Judge Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur and enlarge the petitioner on bail pending disposal of the Crl.A.No.564 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. R.VIVEKANANTHAN, 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 Criminal Miscellaneous Petition has been filed by the Petitioner/Accused, seeking suspension of sentence of imprisonment, imposed by the judgment dated 11.10.2021 passed in Spl.S.C.No.78 of 2018 by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur.



2. The conviction and sentence imposed against the appellant is as follows:-

Under Section	Sentence
3(a) of POCSO Act, 2012	Seven years of rigorous imprisonment with a fine of Rs.50,000/- in default to undergo six months simple imprisonment.

Out of the fine amount of Rs.50,000/-, Rs.40,000/- is ordered to be paid as compensation to the victim for the loss or injury.

3. The submissions of the learned counsel appearing for the petitioner is as under :-

a. Admittedly, the victim/PW2 had deposed that she had completed twelfth standard and her age is about 17 years. However, the respondent police had not proved the age of the victim girl as required under the provisions of Juvenile Justice Act or in accordance with Section 35 of the Indian Evidence Act. The Investigation Officer/PW14 was examined by the Chief on 15.10.2019 and she was also cross examined on the same day by the defence. Till such time, no documentary evidence was let in by the prosecution. PW14 was recalled and through her Ex.P13/mark sheet of the victim girl was marked with regard to the proof of age. No supporting evidence has been let in by the prosecution to prove the mark statement in accordance with Section 35 of the Indian Evidence Act. Though the victim had completed Tenth standard, no effort has been taken by the prosecution to mark the SSLC or Matriculation certificate. Even as per PW14, one Dr.Ramesh Kumar was examined during the course of investigation, with regard to the age of the victim girl. However, the radiology's report was not produced before the Court. The PW14 had deposed that the Doctor who had examined the victim girl had certified that there is probability, that the victim could have completed 17 years on the date of occurrence. When the age of the victim has not been conclusively proved to be below 18 years, the Trial Court ought to have given benefit of a doubt to the petitioner.

b. The learned Trial Judge had also not taken into consideration the contradictions in the evidence of the witnesses who are related to the victim and no other independent witnesses has been examined by the prosecution.



c. There are arguable points available in the Criminal Appeal, which is not likely to be taken for final hearing in the near future and the Petitioner/ accused have got a fair chance of succeeding in the Criminal Appeal and hence, the sentence imposed against the Petitioner/Accused may be suspended and the petitioner may be enlarged with bail.

4. The learned Government Advocate (Crl.side), would submit that it is a case where PW2, a 17 years minor victim girl, was taken by the petitioner to sugarcane field and subjected to penetrative sexual assault. He would also submit that the prosecution has proved the case beyond all reasonable doubts and the Trial Court rightly convicted the Appellant

5. Heard the learned counsel for the parties and perused the materials on record.

6. Admittedly, in this case, PW14/Investigation Officer was cross examined on 15.10.2019, at that stage no documentary evidence had been let in by the prosecution to prove the age of the victim. However, belatedly after a year, the Investigation Officer had been recalled and through her Ex.P13/mark statement has been marked. It is the case of the petitioner that the age of the victim has not been proved beyond all reasonable doubts in accordance with the statutory provisions.

7. Considering the same and also taking into consideration the facts and circumstances of the case, this Court is of the opinion that a prima facie case for granting suspension of sentence has been made by the petitioner. Therefore, the sentence of imprisonment can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions :-

i.The petitioner shall execute bonds for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties, each for a like sum to the satisfaction of the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur.

ii.The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 am., until further orders.



8. The Criminal Miscellaneous Petition is ordered accordingly.

WEB COPY

-sd/-

21/12/2021

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 SESSION JUDGE,
MAGALIR NEETHI MANDRAM (FAST TRACK MAHILA COURT),
TIRUVALLUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

3 THE INSPECTOR OF POLICE,
TIRUTTANI ALL WOMEN POLICE STATION,
TIRUVALLUR DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S. R.VIVEKANANTHAN Advocate on payment of necessary
charges SR.NO.15247

Order

in
CRL MP.11882/2021
in
CRL A.564/2021

Date :21/12/2021

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

RW 21/12/2021