

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.16575 of 2019

in

Crl.A.No.772 of 2019

Mohammed Sulthan @ Shafeek ... Petitioner/sole accused

Vs.

State by Inspector of Police,
All Women Police Station,
Tiruppur - South,
Tiruppur.
(Crime No.3 of 2019)

... Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C. Read with Section 439 Cr.P.C., to suspend the sentence imposed upon the petitioner by judgment and order dated 31.10.2019 passed in Spl.S.C.No.26 of 2019 on the file of the learned Sessions Judge, Magalir Neethimandram (FTC Court), Tiruppur and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.S.Suresh

For Respondent: Mr.Hassan Mohamed Jinnah
State Public Prosecutor

O R D E R

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

This criminal miscellaneous petition has been preferred by the sole accused, seeking to suspend the sentence imposed upon him, by judgment and order dated 31.10.2019 passed in Spl.S.C.No.26 of 2019 on the file of the learned Sessions Judge, Magalir Neethimandram (FTC Court), Tiruppur and to enlarge him on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in Spl.S.C.No.26 of 2019 on the file of the learned Sessions Judge, Magalir Neethimandram (FTC Court), Tiruppur, was convicted of the offence under Sections 5(1) r/w 6 and 11 (v) r/w 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and sentenced as follows:

Offence	Sentence
5(1) r/w 6 of POCSO Act	Rigorous imprisonment for life along with fine of Rs.10,000/-, in default, to undergo additional rigorous imprisonment for one year.
11 (v) r/w 12 of POCSO Act	Rigorous imprisonment for two years along with fine of Rs.2,000/-, in default, to undergo additional rigorous imprisonment for three months.
The sentences are directed to run concurrently.	

3. Challenging the above conviction and sentence, the petitioner/accused, has filed CrI.A.No.772 of 2019 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Suresh, learned counsel for the petitioner/accused and Mr.Hassan Mohamed Jinnah, learned Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that at the time of occurrence, PW1-Aneesha, was aged about 17 years. She was working in a Garments company, which belongs to one Abu Bekkar. The petitioner/accused viz., Mohammed Sulthan @ Shafeek was also working with her in the said company and due to the same she got acquainted with the accused. The accused proposed his love to her and enticed her that he would marry her. On one occasion, she had sexual intercourse with the accused, and at that time, nobody was in the company. The accused took video of the same in his cell phone and on the next day morning, showing the same to PW1, blackmailed her by stating that if she fails to have sexual intercourse with him daily, then he would upload the said video in the internet and thereby forcibly had sexual intercourse with PW1 daily for about two months. Lastly, when they had sexual intercourse, it was witnessed by few people, who are in the Jamath and hence, PW1 and accused were summoned to the Jamath. Before the Jamath people, though the accused family sought seven days time to decide about the marriage between the accused and PW1, later they did not agree and sent the accused out of station. Hence, on 10.04.2019 at about 8 PM, PW1 decided to end up her life and

consumed Auramine. While at the time PW1 was in the hospital, the respondent police went there and recorded her statement. Ultimately, a case was registered against the petitioner/accused for the offence punishable under Sections 5(1) r/w 6 and 11 (v) r/w 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012.

6. The learned counsel for the petitioner/accused would contend that the evidence given by PW1 is entirely contradictory to the averments found in the complaint, which is the basic document for the registration of the case. He would further contend that the mother of PW1, taking a different view had given evidence in support of the petitioner/accused. According to the learned counsel, now the dispute having by the petitioner/accused and the PW1, is amicably settled and therefore, he prayed to allow this petition seeking suspension of sentence to the petitioner/accused.

7. Per contra, the learned Public Prosecutor appearing for the respondent/State raised serious objection for allowing this application. Further, he would contend that the evidences recorded from the prosecution witnesses would prove the case of the prosecution beyond reasonable doubt. According to him, interference of this Court is not necessary in the findings arrived at by the trial Court.

8. On considering the rival submissions made by the learned counsel appearing on either side along with the relevant records, it is true now both PW1 and the petitioner/accused had filed a joint compromise memo stating that the dispute having by them is settled out of Court and it is also proposed to solemnize the marriage between them. However, since the charge against the petitioner/accused is under the POCSO Act, 2012, only because of the reason that the dispute having by the petitioner/accused with PW1, is compromised, we cannot entertain this petition.

9. Now on going through the evidence given by PW1, she has not stated about the date and time, wherein the alleged occurrence had happened. On the other hand, before the trial Court the mother of PW1 was examined as DW1 and on going through the evidence given by her, it is contradictory to the evidence given by PW1 and the said contradiction needs a detailed appraisal. Further, in her evidence, PW1 has stated that only after getting consent from her, the petitioner/accused committed the said offence. Hence, in this area also, a detailed appraisal is necessary. Accordingly, the petitioner has raised substantial grounds for allowing the appeal.

10. Moreover, the petitioner/accused has been in incarceration from 31.10.2019. Further, the appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner/accused is entitled to the relief of suspension of sentence and bail.

11. Accordingly, sentence of imprisonment alone is suspended and bail is granted to the petitioner on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram (FTC Court), Tiruppur.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and
- (iii) The petitioner shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

-sd/-

06/07/2021

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,
MAGALIR NEETHIMANDRAM (FTC COURT),
TIRUPPUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
TIRUPPUR-SOUTH, TIRUPPUR.

+1 C.C. to M/S. S.SURESH Advocate on payment of necessary
charges SR.No.7106

Order

in
CRL MP.16575/2019

in
CRL.A.772/2019

Date :06/07/2021

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