



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Nineteenth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.1851 of 2021
in
CRL A(MD)No.105 of 2021

GOPALAKRISHNAN

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL,
KANYAKUMARI DISTRICT.
CRIME No.4/2016

... RESPONDENT/RESPONDENT

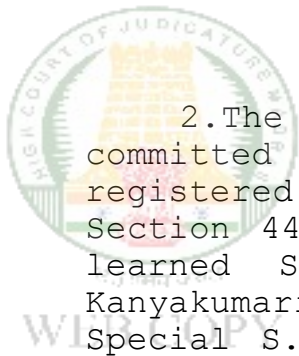
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the operation and execution of sentence imposed by the Special Court for POCSO Act Cases, Kanyakumari District at Nagercoil, in Special Sessions Case No.10/2017 dated 17.12.2020 till the disposal of appeal and may be pleased to enlarge the above petitioner/appellant on bail till the disposal of pending appeal.

PRAYER IN CRL A(MD)No.105 of 2021:

Pleased to call for records and allow this appeal and acquit the appellant from all the charges by setting aside the impugned Judgment passed by the Special court for POCSO Act Cases, Kanyakumari District at Nagercoil in Special Sessions Case No.10 of 2017 dated 17.12.2020.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.L.GEORGE PAUL ANTO, Advocate for the petitioner and of Mrs.S.BHARATHI Government Advocate on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for POCSO Act Cases, Kanyakumari District at Nagercoil in Special S.C.No.10 of 2017, dated 17.12.2020, till the disposal of the appeal.



2.The alleged offence against the petitioner is that he committed rape of a minor girl. A case in Crime No.4 of 2016 was registered against the petitioner by the respondent police under Section 448 of IPC and under Sections 7 and 8 of POCSO Act. The learned Sessions Judge, Special Court for POCSO Act Cases, Kanyakumari District at Nagercoil, has taken up the case on file in Special S.C.No.10 of 2017. The trial Court found the petitioner guilty under Section 448 of IPC and Sections 7 and 8 of POCSO Act. The petitioner was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default to undergo a further period of three months simple imprisonment for the offences punishable under Sections 7 and 8 of POCSO Act. The petitioner was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- (Rupees Five Hundred only), in default to undergo a further period of one month simple imprisonment for the offence punishable under Section 448 of IPC. The trial Court ordered to run the sentence of imprisonment concurrently. Against the conviction and sentence imposed by the trial Court, the petitioner has filed a criminal appeal in Crl.A.(MD)No.105 of 2021 and along with the appeal, he filed this petition for suspension of sentence.

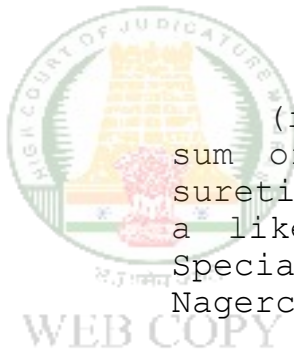
3.On the side of the petitioner, it is stated that the petitioner is in judicial custody from 17.12.2020. The girl is major at the time of occurrence. Earlier complaint was suppressed by the Prosecution. There is contradiction in the evidence of P.W.14 and P.W.18, the victim is major and the petitioner is wrongfully convicted under the POCSO Act and prayed the sentence to be suspended till the disposal of the appeal.

4.On the side of the prosecution, it is stated that the wound certificate of the victim was marked as Ex.P.9. The forensic report was marked as Ex.P.11. Birth certificate of the victim was marked as Ex.P.2. The prosecution has examined 18 witnesses (P.W.1 to P.W.18) and marked 15 documents (Ex.P1 to P.15). The prosecution proved the case beyond all reasonable doubts and prayed the petition to be dismissed.

5.Considering the facts and circumstances of the case and on considering the submissions of the learned counsel for the petitioner and considering the fact that there are some arguable points for consideration in the appeal and on considering the fact that the Criminal Appeal is not likely to be taken up for final hearing in the near future and also considering the fact that the petitioner is in judicial custody for the past three months, this Court is of the view that the petitioner herein are entitled to the relief of suspension of sentence.

6.Accordingly, the substantive sentence of imprisonment is suspended till the disposal of the appeal and the petitioner is released on bail on the following conditions:

<https://hcservices.courts.gov.in/hcservices/>



(i) the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Sessions Judge, Special Court for POCSO Act Cases, Kanyakumari District at Nagercoil;

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity;

(iii) the petitioner shall appear before the Special Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal.

sd/-
19/03/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
KANYAKUMARI DISTRICT AT NAGERCOIL.
2. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.L.GEORGE PAUL ANTO Advocate SR.No.2327

ORDER IN
CRL MP(MD) No.1851 of 2021
in
CRL A(MD) No.105 of 2021
Date :19/03/2021

SJI

<https://hcmv.csr.gov.in/Services/3.2021/3P/6C>