



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Fourth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice A.A. NAKKIRAN

CRIMINAL MISCELLANEOUS PETITION No.1788 of 2022

IN CRL A.23 of 2021

ELAVARASAN

[PETITIONER / ACCUSED]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAMAKKAL,
NAMAKKAL DISTRICT.

[RESPONDENT]

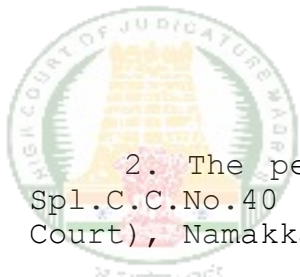
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence made in Judgement dated 09.12.2020 in Spl.C.C.No. 40 of 2015 passed by the Learned Session (Fast Track Mahila) Judge, Namakkal and enlarge the petitioner on Bail pending disposal of the CRL.A.No.23 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.SANKARASUBBU, Advocate for the Petitioner and of M/S.R.MUNIYAPPARAJ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

ORDER

P.N.PRAKASH, J.

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence dated 09.12.2020 passed by the Sessions Judge (Fast Track Mahila), Namakkal in Spl.C.C.No.40 of 2015 and enlarge him on bail, pending disposal of the appeal.



2. The petitioner has been convicted and sentenced as under in Spl.C.C.No.40 of 2015 on 09.12.2020 by the Mahila Judge (Fast Track Court), Namakkal :

Provision under which convicted	Sentence
Section 366-A IPC	Seven years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo six months simple imprisonment
Section 5(1) read with Section 6 of the POCSO Act, 2012	Imprisonment for life with fine of Rs.1,000/-, in default, to undergo six months simple imprisonment

The aforesaid sentences were ordered to run concurrently. The trial Court, has also awarded a compensation of Rs.5,00,000/- to the victim girl "X", from the Victim Compensation Fund under Section 357-A Cr.P.C., after deducting the amount of interim compensation if any, awarded to the victim.

3. Challenging the aforesaid conviction and sentences, the petitioner has preferred appeal in CrI.A.No.23 of 2021 and in the instant Criminal Miscellaneous Petition, he seeks suspension of sentence and bail.

4. It is the case of the prosecution that "X", was aged 14 years, at the time of incident and was studying in 9th standard; on 24.06.2015, after school hours i.e., around 06.00 p.m., while "X" was waiting in the Semmedu bus stand to return home, the petitioner who was known to her, offered lift in his motorcycle; he took her in the motorcycle to a lonely place, stripped her and thrust his private part into her mouth, as he was unable to succeed in vaginal intercourse.

5. On these allegations, the petitioner was tried and convicted as above.

6. Mr.R.Sankarasubbu, learned counsel for the petitioner, took us through the evidence of Dr.Sathya (P.W.21), who has stated that no injuries were found in the private parts of "X"; hymen was intact and there is no sign of she having been raped. He contended that in the light of such medical evidence, the allegation of the prosecution that "X" was raped, is unfounded and therefore, the conviction of the petitioner is bad in law.

7. Per contra, the learned Additional Public Prosecutor refuted the aforesaid contentions of Mr.Sankarasubbu.



8. This Court gave its anxious consideration to the rival submissions.

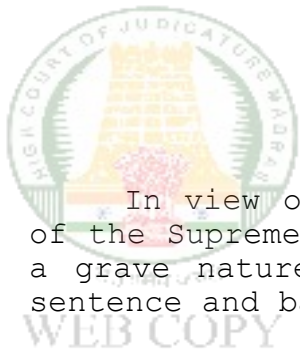
9. This Court gleaned through the evidence of "X" and also the findings of the trial Court. The relevant findings of the trial Court are profitably extracted hereunder :

"21. In the present case the accused has kept his penis in the victim's vagina and pressed and when the victim cried and as the penis did not enter, the accused pushed his penis into the mouth and anus of the victim and that the accused had assaulted the victim throughout the night and hence it is evident that the accused has committed aggravated penetrative sexual assault on the victim. The accused has not proved the contrary as required under Section 29 of the POCSO Act that there was no aggravated penetrative sexual assault committed by him on the victim. From the above discussion, it is evident that the prosecution has proved the offence under Section 366-A IPC and it is decided that the accused has committed the offence under Section 5(1) r/w 6 of POCSO Act."

10. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) [(2008) 5 SCC 230], has held as follows:

"30. ... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

(emphasis supplied)



In view of the above categorical and authoritative pronouncement of the Supreme Court, in the opinion of this Court, in a case of such a grave nature, it would not be appropriate to grant suspension of sentence and bail and accordingly, this petition stands dismissed.

-sd/-
24/02/2022

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,
(FAST TRACK MAHILA). NAMAKKAL.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAMAKKAL, NAMAKKAL DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S. R.SANKARASUBBU Advocate on payment of necessary charges

Order
in
CRL MP.1788/2022
in
CRL A.23/2021

Date :24/02/2022

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JPA 03/03/2022