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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.2682 of 2022

in Crl.A.No.208 of 2022

Gobalakrishnan

... Petitioner /Accused

versus

The Inspector of Police,
All Women Police Station,
Udhagamandalam.
(Crime No.2 of 2018)

...Respondent /Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C., praying to suspend the sentence passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam at Nilgiris in Special S.C.No.8 of 2018 dated 09.04.2021 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.T.N.Rangesh Kanna

For Respondent : Mr.Leonard Arul Joseph Selvam

Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been preferred by the petitioner/accused, seeking to suspend the sentence imposed upon him, by judgment and order dated 09.04.2021 passed in Special S.C.No.8 of 2018 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam at Nilgiris and to enlarge him on bail, pending disposal of the appeal.



2. The petitioner, who is the accused in Special S.C.No.8 of 2018 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam at Nilgiris. He was found guilty for the offences punishable under Section 5(1) and 5(m) r/w 6 of POCSO Act, Section 506(ii) of IPC and Section 2(1)(w)(i) of the SC/ST Act and has been convicted and sentenced as under:

Offence	Sentence
5(1) and 5(m) r/w 6 of POCSO Act	Rigorous Imprisonment for 10 years along with fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for 1 year
506(ii) of IPC	Rigorous Imprisonment for 4 years
2(1)(w)(i) of the SC/ST Act	Rigorous Imprisonment for 4 years along with fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for 1 year
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the above conviction and sentence, the petitioner/accused, has filed CrI.A.No.208 of 2022 along with the instant Miscellaneous Petition, seeking suspension of sentence and bail.

4. Heard Mr.T.N.Rangesh Kanna, learned counsel appearing for the petitioner/accused and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. The case of the prosecution is that the accused is the neighbour of the victim girl. On 25.04.2018, at about 6.30p.m., when at the time P.W.1, who is the grandmother of the victim girl, searched her and she found the victim girl was crying just near to the accused in his house. Upon enquiry, the victim girl stated that the accused abused her sexually by inserting his finger into her genital area and kissed the same. While at the same time, P.W.3 Sabeena, who is the mother of the victim girl removed the inner wear of the victim girl and found that genital area of the victim girl was found reddish in colour with some white particles. Hence, the case.

6. The learned counsel for the petitioner/accused submitted that the entire case of the prosecution rests upon the evidence given by P.W.1 to P.W.3. As per the evidence given by P.W.1, after the occurrence, the genital organ of the victim girl was found reddish in colour with some white particles. In this regard, the Doctor, who examined on the side of the prosecution did not say anything about the change of colour in the genital organ. Further, the Doctor, who examined the victim girl immediately in respect to the sexual assault has not been examined before the trial Court. It is his specific submission that the petitioner is in judicial custody from 09.04.2021 and he is the sole breadwinner of his family. Therefore, the



suspension of sentence will have to be granted.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the State submitted that the conviction has been rendered placing reliance upon the evidence given by the witnesses, who are all examined on the side of the prosecution. Further, the material contradictions found available in the evidence given by the prosecution witnesses, is no way relevant to show that the accused herein is an innocent. According to him, this petition requires to be dismissed.

8. Considering the submissions made, I am of the view that there are substantial issues to be considered in the appeal. As rightly pointed out by the learned counsel for the petitioner that P.W.1 in her evidence has categorically stated that while at the time of seeing the victim girl, genital area was found reddish in colour and in this regard, the Doctor, who examined as P.W.10 did not say anything. Further, the victim girl has stated in her evidence as she gave evidence as per the instructions given by her grand mother. Therefore, the said aspects has to be appraised in detail. As of now, the petitioner is in the judicial custody from 09.04.2021.

9. Thus, considering the above facts, especially the period of incarceration, as aforesaid and also as the appeal is not likely to be taken up in the near future, this Court is inclined to suspend the sentence for the petitioner/accused.

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

(a) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam at Nilgiris;

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities; and

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar 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.



11. With the above directions, this Criminal Miscellaneous Petition is ordered.

-sd/-
18/04/2022

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This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM
(FAST TRACK MAHILA COURT),
UDHAGAMANDALAM AT NILGIRIS.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
UDHAGAMANDALAM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+2 C.C. to M/S. T.RANGESH KANNA Advocate on payment of
necessary charges SR.NO.5746

Order

in
CRL MP.2682/2022
in
CRL A.208/2022

Date :18/04/2022

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TA-19/04/2022