



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty First day of January Two Thousand Twenty Two

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PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.12159 of 2021

in

CRL.A.No.590 of 2021

M.PALANI

[APPELLANT / ACCUSED]

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PENNAGARAM,
DHARMAPURI DISTRICT.
CR.NO.8/2016.

[RESPONDENT / COMPLAINANT]

Petition praying that in the circumstances stated therein the High Court will be pleased to Suspend the sentence dated 20.09.2021 passed in Spl.S.C.No.16 of 2017 against the appellant of the file of the Sessions Judge, Fast Track Mahila Court, Dharmapuri pending disposal of the above Crl. Appeal No.590 of 2021.

Order: This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S. J.BHARATHI RAJA, Advocate for the Petitioner and of MR. S.SUGENDRAN, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

(This case has been heard through video conferencing)

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment, imposed in the Judgment dated 20.09.2021 in Spl.S.C.No.16 of 2017 on the file of the Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2. In and by the judgment of the Trial court, the petitioner were convicted and sentenced as follows:-



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Offence u/s	Conviction & Sentence
363 IPC	2 years R.I and to pay a fine of Rs.1000/-, in default, undergo three months S.I.
7 r/w 8 of POCSO Act, 2012	3 years R.I and to pay a fine of Rs.3,000/-, in default, undergo six months S.I

against which, the present Criminal appeal has been filed.

3. The case of the prosecution is as under:-

(a) The victim girl, aged 13 years belongs to the Scheduled Caste community and the accused belongs to the Most Backward Class community. Further, the case is that on 13.11.2016 at about 11.30 pm, while, the victim girl was sleeping on the verandah of her house, the accused knowing that she belongs to the Scheduled Caste community, with intent to sexually assault her against her will, had lifted the victim and taken her away and when the victim had raised alarm and screamed, the accused had dropped the victim and ran away from the scene of occurrence. Based on the complaint, a case was registered by the respondent/police in Crime No.8 of 2016 and after investigation, final report was filed against the accused for the offences under Section 363 IPC, Section 7 r/w 8 of POCSO Act, 2012 and Section 3(1) (w) (i) of SC/ST (Prevention of Atrocities) Act.

(b) The case was taken in S.C.No.16 of 2017 and on the side of the prosecution, PW1 to PW21 were examined and Ex.P1 to Ex.P18 were marked. When questioned, the accused denied the charges. The Trial Court, after hearing the prosecution and the accused, found the accused guilty for the offences under Sections 363 IPC and 7 r/w 8 of POCSO Act, 2012, convicted and sentenced him as stated above.

4. The submissions of Ms.S.Saritha, learned counsel appearing for the petitioner are as under:-

(a) As per the prosecution, the alleged offence is stated to have taken place on 13.11.2016 at about 23.30 hours and the complaint had been given only on the next day on 14.11.2016 at 21.30 hours. No explanation has been given by the prosecution for the delay. The evidence of PW1/victim girl is highly doubtful and unbelievable, she had deposed that she is 13 years old and while, she was sleeping on the verandah at her grand mother's house on 13.11.2016, the accused had lifted her and started running away and that when she raised alarm, he had ran further for about 30 feet and thereafter, dropped her and ran away. Further it is the case of PW1, that the petitioner



was apprehended by her father and uncle at the spot and they left him. If the incident had been real, the complaint would have been given immediately to the Police. As per the evidence of prosecution, they had conducted panchayat and only thereafter, they had given the complaint.

(b) Further assuming that an attempt has been made, taking into consideration, the entire evidence of the witnesses, no case of sexual intent has been made out against the petitioner for invoking Section 7 r/w 8 of POCSO Act. The Trial Court, failed to take into consideration the contradictions between the witnesses and convicted the petitioner.

(c) The petitioner is in custody from the date of conviction i.e., 20.09.2021. The petitioner/appellant has got a fair chance of succeeding in the Criminal Appeal. There are arguable points available in the Criminal Appeal, however, as the appeal is not likely to be taken for final hearing in the near future, the sentence imposed against the petitioner/appellant may be suspended and the petitioner may be enlarged on bail.

5. The Respondent had filed a counter.

6. Mr.S.Sugendran, learned Government Advocate (Crl. Side) would submit that it is the case where the petitioner, who belongs to the Most Backward Class, had lifted the victim girl aged 13 years, who belongs to the Scheduled Caste community. While she was sleeping in the verandah, the petitioner had attempted to take her away with the intent of sexually harassing her. He would also submit that the prosecution has examined from PW1 to PW21 and marked Ex.P1 to Ex.P18 and the Trial Court, having found that the case of the prosecution was proved beyond any reasonable doubts, had convicted the petitioner.

6. Heard the learned counsel and carefully perused the materials on record including the depositions of the witnesses.

7. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the view that the petitioner has made out a case for grant of and thereby, 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 a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only), with two sureties, each for a like sum to the satisfaction of the Trial Court.



(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.

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8. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

21/01/2022

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,
FAST TRACK MAHILA COURT,
DHARMAPURI.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PENNAGARAM, DHARMAPURI DISTRICT.

3 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

C.C. to M/S. J.BHARATHI RAJA Advocate on payment of necessary charges

Order

in
CRL MP.12159/2021
in
CRL.A.590/2021

Date :21/01/2022

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INBA~21/01/2022