



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Tenth day of January Two Thousand Twenty Two

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.11797 of 2021

IN CRL.A.No.557 of 2021

SARAVANAN @ JAYAKUMAR

[PETITIONER/APPELLANT/ACCUSED]

Vs

STATE REP BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
W18, ALL WOMEN POLICE STATION,
M.K.B NAGAR,
CHENNAI-39

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner by judgment dated 12.07.2021 passed in S.C.No.480/2021 on the file of Learned Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Chennai-104 and enlarge the petitioner on bail pending disposal of the above CRL.A.No.557 of 2021 thus render justice.

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 G.RAVIKUMAR, Advocate for the petitioner and of M/S.S.SUGENDRAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

(This case has been taken up through video conference)

This Criminal Miscellaneous petition has been filed by the petitioner seeking suspension of sentence of imprisonment imposed by the Special Court for Exclusive Trial of Cases under POSCO Act, Chennai in SC.No.480 of 2018 dated 12.07.2021.

2. In any by the judgment of the Trial Court, the petitioner/accused was convicted and sentenced for the following offences :-



WEB COPY

Offences	Conviction and Sentence
Sec.8 of POSCO Act	Sentenced to undergo 5 years imprisonment and to pay a fine of Rs.5,000/- i/d. one month S.I.
Section 12 of POSCO Act	Sentenced to undergo 3 years imprisonment and to pay a fine of Rs.5,000/- i/d. one month S.I.
Section 506 (ii) IPC	Sentenced to undergo 2 years imprisonment

against which the present appeal has been filed.

3. The case of the prosecution is that the defacto complainant/PW2 is the father of the victim girl/PW1. The victim mother/PW3 got separated from PW2 and she was living separately with her children (victim girl/PW1 and her son) and was living with the accused. The accused frequently visited the house, whileso, on 29.08.2015 at about 2.30pm. the accused sat in a naked position in their house and threatened the victim girl and her mother to sit in the same nude position in front of him and also threatened them with dire consequences. The accused had also sexually assaulted the victim girl by touching her breast inappropriately. Based on the complaint given by PW2/father of the victim girl, the case was registered by the P.5, MKB Nagar P.S., Chennai in Cr.No.845 of 2015. Since, the case was registered for the offences under Section 8 of POSCO act r/w.506 (ii) IPC on 01.09.2015 at 10.00hrs. The case was taken up by the then Inspector of Police and had recorded the statement of the victim girl and other witnesses on 01.09.2015 and the respondent arrested the accused and remanded to judicial custody on 02.09.2015.

4. Since, the case was registered for the offence under Section 8 of POSCO act, the case was transferred to W-18, AWPS, MKB Nagar, Chennai on 24.08.2018 and thereafter the I.O. produced the victim girl before the XIV Metropolitan Magistrate, Egmore, Chennai and recorded the statement of the victim girl under Section 164 Cr.PC on 17.09.2018. After completion of investigation, charge sheet was filed against the accused before the POSCO Court Chennai and taken up for trial in SC.No.480 of 2018. On the side of the prosecution, PW1 to PW9 were examined and 7 witnesses were marked. After completion of recording evidence, the trial Court had questioned the petitioner under Section 313 Cr.PC and he had given written explanation.

5. The trial Court after hearing both sides had found the accused guilty for the offence and convicted and sentenced him as stated supra.



6. The learned counsel for the petitioner would submit that it is the specific case of the petitioner that PW2 father of the victim had borrowed an amount of Rs.10lakhs from him for construction of house and thereafter he had failed to return the money to the petitioner, there was a dispute and enmity between them. PW2 who is an advocate clerk by profession had in order to wreak vengeance had given the police complaint using the victim.

7. Even as per the prosecution, the victim was 17years and 10months on the alleged date of occurrence. The alleged occurrence is stated to have taken place on 29.08.2015 and the complaint has been given after three days and no explanation has been given by the prosecution for such a delay. Further PW3/mother of the victim has not supported the case of the prosecution, she has specifically stated that PW2 had borrowed an amount of Rs.10lakhs from the accused and they have not repaid the amount to the accused and the accused used to demand money from them frequently. It is the case that she had advised her husband to repay the amount and there was quarrel between them and her husband had given the complaint through her daughter.

8. The learned counsel further submit that it is the case of the victim that immediately after the occurrence she had gone to the neighbours house and informed them about the incident. However, the neighbours who have been examined as PW4 and PW5 have not supported the case of the prosecution and they have been treated as hostile witnesses. Further, though the complaint has been given on 01.09.2015, the statement from the victim girl under Section 164 Cr.PC had been recorded only on 17.09.2018, thereby creating a doubt in the case of the prosecution. The father of the victim girl in order to evade payment has given a false complaint, through his daughter. He would submit that there are other arguable grounds available in the criminal appeal, which is not likely to be taken up for final hearing in the near future and the petitioner has got a fair chance of succeeding in the criminal appeal and hence, the substantive sentence imposed against the petitioner may be suspended and the petitioner may be enlarged with bail.

9. The learned counsel would further submit that right from the date of conviction on 12.07.2021, the petitioner is in custody.

10. Mr.G.Sugendran, learned Government Advocate (Crl.side) would submit that the mother of the victim girl got separated from her father due to the illegal relationship she had with the petitioner, that is the reason the mother has not supported the prosecution case.

11. The victim had immediately after the occurrence informed her junior paternal uncle/PW6 and PW6 had intimated to PW2 and thereby there had been a delay which has been explained.



12. At this juncture, the learned counsel for the petitioner would submit immediately after the arrest, the respondent has recorded a confession statement from the petitioner and he had informed about the money dispute pending between the father of the victim and himself. Further, in this case, the son and the daughter are stated to have living with the mother/PW3. The respondent has not examined the son, further the ladies who are neighbours viz., PW4 and PW5 have not supported the case of the prosecution.

13. Heard the counsel and perused the materials available on record.

14. PW3/mother of the victim has not supported the case of the prosecution, further the independent witnesses PW4 and PW5 to whom PW1 is stated to have immediately revealed about the incident have also not supported the case of the prosecution.

15. This Court is of the opinion, that the petitioner has made out the case for granting suspension of sentence. 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 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.20,000/- (Rupees Twenty Thousand only), with two sureties, each for a like sum to the satisfaction of the Special Court for Exclusive Trial of Cases under POSCO Act, Chennai.

ii. The petitioner shall appear before the Trial Court on every Monday at 10.30am, until further orders. If Monday is holiday, the petitioner shall appear on the next working day.

The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-
10/01/2022

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.



1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRAIL OF CASES
UNDER POCSO ACT, CHENNAI-600 104.

2 THE SUPERINTENDENT,
CENTRAL PRISON-1,
PUZHAL, CHENNAI.

3 THE INSPECTOR OF POLICE,
W18, ALL WOMEN POLICE STATION,
M.K.B NAGAR, CHENNAI-39

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

+2 C.C. to M/S G.RAVIKUMAR Advocate on payment of necessary
charges SR.NO.481

Order

in
CRL MP.11797/2021
in
CRL A.557/2021

Date :10/01/2022

From 7.2.2001 the Registry is issuing certified
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RW 12/01/2022