



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Second day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION No.12726 of 2021

IN CRL.A.No.615 of 2021

RAJA @ POTHURAJA

[PETITIONER/APPELLANT/ACCUSED]

Vs

STATE REP BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
OMALUR, SALEM DISTRICT
(CRIME NO.14/2018)

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 upon the petitioner by the Sessions Judge Special Court for Trail of protection of Children from Sexual Offences Act Cases, Salem in Spl.S.C.No.94/2019 (Old Spl.S.C.No.43 of 2018) vide a judgement dated 19.11.2020 and enlarge the petitioner on bail, pending disposal of the above CRL.A.No.615 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.JOHN SATHYAN, 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 of the Court was made by R.HEMALATHA, J.]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 19.11.2020 in Special S.C.No.94 of 2019 (Old Special S.C.43 of



2018) on the file of the Sessions Judge, Special Court for Trial of Protection of Children from Sexual Offences Act Cases, Salem, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner is the accused in Special S.C.No.94 of 2019 (Old Special S.C.43 of 2018) on the file of the Sessions Judge, Special Court for trial of Protection of Children from Sexual Offences Act Cases, Salem, and was convicted and sentenced as detailed under:

Conviction	Sentence
U/s. 4 r/w 3 of POCSO Act r/w Section 376(2) (i) (j) & (k) IPC.	Life Imprisonment and a fine of Rs.50,000/-to be paid to the victim girl as compensation under Section 357(1) Cr.P.C.

Challenging the conviction and sentence, the petitioner has filed CrI.A.No.615 of 2021 with the present petition for suspension of sentence and bail.

3. Heard Mr.R.John Sathyan, learned counsel for the petitioner and Mr. R. Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

4. The case of the prosecution is that the complainant Saraswathi, W/o. Jayaraman, was a resident of Compost Road, Jalagandapuram, Mettur, Salem. She was residing with her husband and five year old daughter (victim), who was studying in Balwadi school. The accused, who is also the resident of the same locality was a college student studying B.Com in a college at Salem. The accused was also taking care of a Fancy Store located opposite to his house, which was owned by his mother. The victim child's grand father was a tenant residing in a small portion of the house of the accused and the child used to visit him and play with him. The accused also used to take the child to his shop and offer her chocolates. It is the case of the prosecution that the accused used to sexually assault the victim child. On one such occasion i.e., on 08.04.2018 at 9.30 a.m. the victim child was found missing by her mother and later found coming out of the house of the accused walking in a strange manner. She has also complained of pain in her private parts and burning sensation while urinating. Her mother found blisters on her private parts and thought to be some allergic reaction and got medicines for the same. On 15.04.2018, at about 6 p.m., the victim child who was lured by the accused was taken to his shop and was sexually assaulted. The mother of the child on hearing her child crying from the shop of the accused, went to the shop and found the accused having



penetrative sexual assault while the child was continuously crying. She took her child back home. The father of the victim child was informed of the incident who went to the shop only to find it locked and then called up the accused who threatened him with dire consequences. The next day, a written complaint was given to the child line, who in turn referred to Omalur Police Station. The investigation revealed that the accused had committed offences under Section 5(m) r/w 6 of the POCSO Act 2012, and a final report was filed. The trial court framed charges under Section 4 r/w 3 of POCSO Act r/w Section 376(2)(i) (j) & (k) IPC and convicted and sentenced the accused as already stated.

5. Mr. R. John Sathyan, learned counsel appearing for the accused contended that there are inconsistencies in the evidence of the prosecution witnesses and the victim child was a tutored witness. His main contention is that on 15.04.2018, the accused was not in town and therefore, could not have committed the offence as alleged by the prosecution. According to him, he along with two of his relatives had booked tickets to Thirupathy and left Karur for Thirupathy on 14.04.2018 and returned only on 16.04.2018 at about 3 a.m..

6. Per contra, Mr. R. Muniyapparaj, learned Additional Public Prosecutor contended that the plea of alibi taken by the defence was exposed to be doubtful and that it was a clear case of sexual abuse of the victim child not just on one occasion but on several occasions. The learned Additional Public Prosecutor also contended that the prosecution has proved the case beyond reasonable doubts. He therefore, prayed for dismissal of the petition.

7. In the instant case, the suspension of sentence based on the grounds pointed by Mr.R. John Sathyan, learned counsel appearing for the petitioner, cannot be allowed at this juncture. All those aspects can be gone into only at the time of final hearing of the Criminal Appeal. Moreover, the accused was found guilty of the offences punishable under Section 4 r/w 3 of POCSO Act r/w Section 376(2) (i) (j) and (k) IPC and the victim was a child aged just 5 years.

8. At this juncture, it is pertinent to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), has held that the relief of suspension of sentence is not an automatic one and that the presumption that the accused is innocent which is normally available for regular bail is not available in the case of suspension of sentence and that the normal rule is jail and not bail.



9. Considering the manner in which the crime has been alleged to have been committed and also the gravity of the offence, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

02/02/2022

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,
SPECIAL COURT FOR TRIAL OF PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES ACT CASES,
SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
OMALUR, SALEM DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

Order

in

CRL MP.12726/2021

in

CRL A.615/2021

Date :02/02/2022

From 7.2.2001 the Registry is issuing certified
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RW 03/02/2022