



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.1.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.12391 of 2021

in

Crl.R.C.No.877 of 2021

Ajithkumar
rep. by mother and natural guardian
Rekha

Petitioner

Vs.

The State rep. by
The Inspector of Police,
W29, All Women Police Station,
Avadi, Chennai 600 054.
Crime No.9/2019

Respondent

PRAYER: The Criminal Miscellaneous Petition is filed under Section 397 and 401 of the Code of Criminal Procedure read with Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015, to suspend the conviction and sentence passed against the Revision Petitioner J.C.No.21 of 2020 dated 17.3.2021 by the Juvenile Justice Board, Thiruvallur and enlarge him on bail.

For Petitioner : Mr.C.Venkatesan

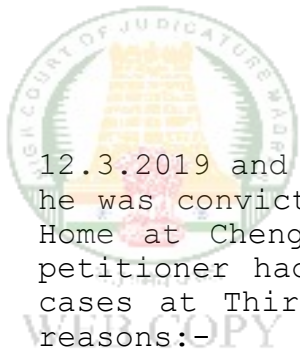
For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

For Amicus Curiae : Mr.V.Vivekanandhan

O R D E R

This Criminal Miscellaneous Petition has been filed by the Petitioner, seeking suspension of the order of detention passed by the learned Juvenile Justice Board, Thiruvallur in J.C.No.21 of 2020 dated 17.3.2021.

2. The petitioner stands charged for the offence punishable under Section 450 IPC read with Section 5(J)(ii), 5(I) and 6 of Prevention of Children from Sexual Offences (POCSO) Act, 2012 for having alleged to have committed penetrative sexual assault on the victim girl, who was aged about 17 years and above at the time of occurrence viz., on



12.3.2019 and on his pleading guilty before the Juvenile Justice Board, he was convicted and sentenced to to be detained in Government Special Home at Chengalpattu for a period of three years against which the petitioner had preferred an Appeal before the Special Court for POCSO cases at Thiruvallur. The said Appeal was returned for the following reasons:-

"1) The appellant/accused/Ajithkumar already admit the offence on the basis of the consent, the Trial Court imposed the judgment how this appeal is maintainable.

2) The Trial Court full judgment copy to be enclosed.

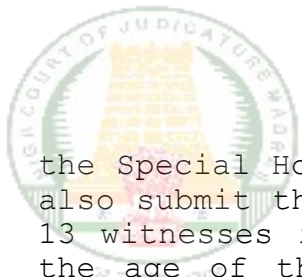
3) The Hon'ble High Court, Madras any authority/citation to be enclosed.

4) Fresh docket sheet to be enclosed."

3. On such return, the present Criminal Revision Case has been filed by the child in conflict with law under 397 and 401 Cr.P.C. read with Section 102 of the Juvenile Justice (Care and Protection of Children) Act.

4. Learned counsel for the petitioner would submit that the petitioner and the victim were juveniles at the time of occurrence and the petitioner was aged 15 years (born on 30.4.2004) and the victim was 17 years (born on 24.10.2002) and the victim had become pregnant and delivered a child also. He would further submit that on an earlier occasion also, the petitioner/child in conflict with law was alleged to have had penetrative sexual intercourse with the victim girl due to which, she got conceived and the pregnancy was aborted and subsequently, this time, when the petitioner/child in conflict with law had committed penetrative sexual intercourse with the victim once again, she became pregnant and delivered a baby. He would also submit that the consensual affair between the petitioner and the victim girl has been coloured as sexual assault on the part of the petitioner and on his had pleading guilty, the Juvenile Justice Board, without initiating for a fair trial, had recorded the plea of guilt of the petitioner/child in conflict with law and by a non-speaking cryptic order, directed the petitioner/child in conflict with law to be detained in the Government Special Home, Chingleput for a period of three years.

5. The learned counsel for the petitioner would further submit that though the Act is a gender neutral Act and admittedly, in this case, the victim child is older than the petitioner/child in conflict with law, the Juvenile Justice Board had not taken into consideration those factual aspects and without analysing the mental health status of the petitioner/child in conflict with law and that of the alleged victim, it had found the petitioner guilty and ordered him to be detained in



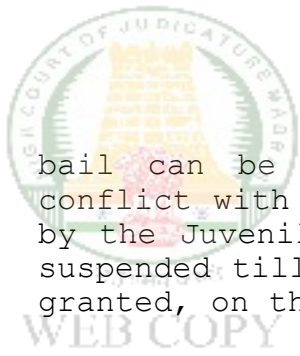
the Special Home merely on the basis of his pleading guilty. He would also submit that in this case, though the respondent police have cited 13 witnesses in the final report, none of them has been examined and the age of the alleged victim child also has not been conclusively proved and no finding has been given by the respondent police as to who is responsible for the pregnancy. He would also bring to the notice of the court that the victim girl, in the 164 statement, had specifically stated that the relationship between the petitioner and the alleged victim was one of consensual in nature. He would further submit that the petitioner has got a fair chance of succeeding in the Criminal Revision Case and there are arguable points available in the Criminal Revision Case, however, as the Revision Case is not likely to be taken for final hearing in the near future, the sentence imposed against the petitioner may be suspended and the petitioner may be enlarged on bail.

6. Learned Government Advocate (Criminal Side) would submit that the petitioner is a child in conflict with law aged about 15 years at the time of occurrence and the victim girl was 17 years and above. The case of the prosecution is that on 12.3.2019, the petitioner had trespassed into the house of the victim and committed penetrative sexual assault on her due to which, she had become pregnant. He would also submit that on a similar earlier occasion, the victim became pregnant and it was aborted and a case was registered and the petitioner was let out on bail and during the period of bail, the petitioner had once again committed penetrative sexual assault on the victim and she had become pregnant and delivered a child.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. In this case, the age of the petitioner/child in conflict with law was admittedly, 15 years at the time of occurrence and that of the victim girl was 17 years. On analysis of the prosecution case and a perusal of the 164 statement recorded from the victim girl reveals that the petitioner and the victim girl were in love with each other and that her mother reprimanded her and had left her in her aunt's house and thereafter, the victim had informed him over phone that she was in her aunt's house and he had come there and informed her aunt that he was ready to marry her for which her aunt had advised her that they would perform the marriage after some time and thereafter, he was also living in her aunt's house and they were living as husband and wife and that after some time, the petitioner had started drinking and denied the paternity of the child.

9. It is further seen that in this case, the respondent has not conducted proper investigation as to the mental health status of the petitioner/child in conflict with law. Further, there is no material to show that any enquiry under Section 14 of the Juvenile Justice Act has been conducted on the petitioner/child in conflict with law. Therefore, this court is of the opinion that suspension of sentence and



bail can be granted pending revision to the petitioner/child in conflict with law on certain conditions. Accordingly, the order passed by the Juvenile Justice Board dated 17.3.2021 in J.C.No.21 of 2020 is suspended till the disposal of the Criminal Revision Case, and bail is granted, on the following conditions:-

- i. The mother of the petitioner/child in conflict with law shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), to the satisfaction of the Juvenile Justice Court, Thiruvallur;
- ii. she shall file an Affidavit of Undertaking that she will take responsibility for the child in her custody; and
- iii. she will produce the petitioner/ child in conflict with law before the Juvenile Justice Court, Thiruvallur on the first and third Monday of every English Calendar month at 10.30 am until further orders. If any of such days happen to be a holiday, he shall be produced on the next working day.

10. 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.

TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT FOR POCSO CASES,
THIRUVALLUR.

2 THE JUVENILE JUSTICE BOARD,
THIRUVALLUR.

3 THE INSPECTOR OF POLICE,
W29 ALL WOMEN POLICE STATION,
AVADI, CHENNAI-600 054.



4 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

5 THE GOVERNMENT SPECIAL HOME,
CHENGALPATTU,
CHENGALPATTU DISTRICT.

6 THE HON'BLE POCSO COMMITTEE,
HIGH COURT, MADRAS.

+1 C.C. to M/S.C.VENKATESAN Advocate on payment of necessary
charges SR.NO.534

Order

in
CRL MP.12391/2021
in
CRL.R.C.877/2021

Date :10/01/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

INBA-12/01/2022