



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighteenth 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.12757 of 2021

IN CRL.A.NO.338 of 2021

M.MANIBHARATHI

[PETITIONER/APPELLANT]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGAPATTINAM. NAGAPATTINAM DISTRICT.
(IN CRIME NO.02 OF 2015)

[RESPONDENT]

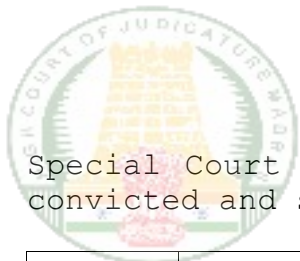
Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.338 of 2021 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the Judgment dated 27.04.2021 made in S.C.No.114 of 2015 on the file of the Special Court under POCSO Act, Nagapattinam and enlarge the petitioner on bail pending disposal of the above CRL.A.NO.338 of 2021 IN CRL.MP.NO.12757/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.338 of 2021 on the file of the High Court and upon hearing the arguments of M/S.AYYACHAMY.P Advocate for the petitioner and of MR.M. BABU MUTHU MEERAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

ORDER

[R.HEMALATHA, J.]

This criminal miscellaneous petitions has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 27.04.2021 passed in S.C.No.114 of 2015 on the file of the



Special Court under POCSO Act, Nagapattinam, wherein the accused was convicted and sentenced as detailed hereunder.

S.No.	Conviction	Sentence
1.	U/s. 4 r/w 3(a) POCSO Act.	Rigorous Imprisonment for life and pay a fine of Rs.10,000/- in default, to undergo simple imprisonment for two years.
2.	U/s. 3(2)(v) SC/ST (POA) Act, 1989	Imprisonment for life and pay a fine of Rs.10,000/- in default, to undergo simple imprisonment for two years.
3.	U/s. 506(ii) IPC	Rigorous imprisonment for 7 years.

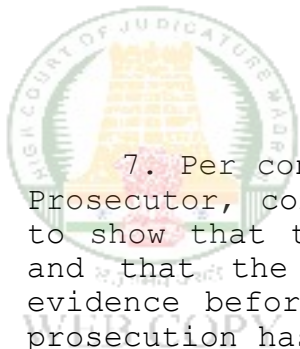
The Sessions Judge further directed that the sentence shall run concurrently and the sentence already undergone shall be set off under Section 428 Cr.P.C.

3. Challenging conviction and sentence, the petitioner has filed CrI.A.No.338 of 2021. The present petition is filed for suspension of sentence and bail.

4. The case of the prosecution is that the accused belongs to Hindu Kallar Community and the victim child belongs to Hindu Adi Dravidar Community. The victim was aged 15 years on the date of occurrence and both her parents were agricultural labourers. On 17.03.2015, the victim was sitting in the agricultural field where her parents were working and at about 3 p.m., the accused summoned her by gesturing to her. When the victim child went near the accused, he pulled her hands and dragged her into his house and sexually assaulted her by touching her private parts. When the victim shouted, the accused threatened her with dire consequences. Thereafter, the victim left the place. At about 6.30p.m., when the victim child was returning after buying coffee for her father, the accused promised her that he would marry her and took her to a remote place and had sex with her without her consent.

5. Heard Mr. P. Ayyaswamy, learned counsel for the petitioner and Mr.M. Babu Muthu Meeran, learned Additional Public Prosecutor for the respondent.

6. The learned counsel for the accused contended that since the accused belongs to Hindu Kallar community, a false case has been foisted against him and that the age of the victim was not 15 years as claimed by the prosecution.



7. Per contra Mr.M. Babu Muthu Meeran, learned Additional Public Prosecutor, contended that the prosecution had filed enough materials to show that the victim was aged 15 years on the date of occurrence and that the victim child had also given cogent and acceptable evidence before the trial court. He would further contend that the prosecution has established the guilt of the accused beyond reasonable doubts. It is also his submission that the earlier suspension of sentence and bail in Crl. M.P. No.6724 of 2021 was dismissed on 29.07.2021 and no new ground has been brought in by the accused.

8. In the instant case, the victim was aged 15 years and the accused has been found guilty of the offences punishable under Sections 4 r/w 3(a) POCSO Act, 3(2)(v) SC/ST (POA) Act, 1989 and 506 (ii) IPC. The grounds cited by the petitioner cannot be gone in the instant petition. The crime proved against the accused is also serious in nature and therefore, no leniency can be shown to the petitioner.

9. 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.

10. 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/-

18/02/2022

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 SPECIAL COURT UNDER
POCSO ACT, NAGAPATTINAM.



2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGAPATTINAM. NAGAPATTINAM DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL JAIL, CUDDALORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S. AYYACHAMY P. Advocate on payment of necessary
charges

Order
in
CRL MP.12757/2021
in
CRL.A.338/2021
Date :18/02/2022

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copies of the BAIL/Anti.BAIL Orders in this format

CSK 21/02/2022