



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Seventeenth day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4192 of 2023
in
CRL A(MD)No. 446 of 2022

DEENAN @ VIJAYA NARAYANAN ...PETITIONER/APPELLANT
(NOW HE IS IN PUDUKKOTTAI BORSTAL SCHOOL AND
DISTRICT JAIL AND HIS CP NO. IS 511)

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
AMMAPETTAI POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.261 OF 2014.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed by the Judgment dt 31.01.2020 in Special S.C.No.28/2014 on the file of the Learned Sessions Judge for Sexual Offences against Children Special Court Thanjavur and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No.446 of 2022:

pleased to call for records and set aside the conviction passed by the Learned Sessions Judge for Sexual Offences against Children Special Court, Thanjavur in Special S.C.No. 28/2014 dated 31.01.2020 and acquit the Appellant of the charge(s).

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.SOMASUNDARAM E, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.28 of 2014, dated 31.01.2020, on the file of the learned Sessions Judge for Sexual Offences against



Children Special Court, Thanjavur, till the disposal of Criminal Appeal.

2. The case of the prosecution is that on 11.06.2014 at about 04.30 p.m., the victim girl had returned back to her house from her school and after changing her uniform, she has gone to attend her natural call in the field and that on her way to the field, the petitioner/sole accused came in a motor cycle and asked her to come near thorny bush and in that place, the petitioner had committed sexual assault on the minor victim girl, and on that basis, FIR came to be registered in Crime No.261 of 2014.

3. The respondent police, after completing the investigation, has filed the final report and after committal, the case was taken on file in Spl.S.C.No.28 of 2014 and the same was pending on the file of the learned Sessions Judge for Sexual Offences against Children Special Court, Thanjavur.

4. During trial, the prosecution has examined 21 witnesses as P.W.1 to P.W.21, exhibited 22 documents as Ex.P.1 to Ex.P.22 and marked 4 material objects as M.O.1 to M.O.4. The defence has examined 2 witnesses as D.W.1 and D.W.2.

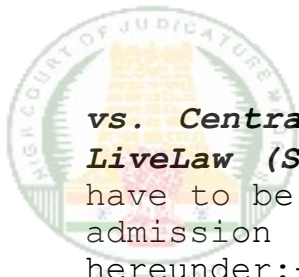
5. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 31.01.2020 convicting the petitioner for the offences under Sections 6 r/w 5(m) of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. No doubt, the petitioner's earlier application seeking suspension of sentence was dismissed by this Court vide order dated 23.09.2022.

7. The learned counsel appearing for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that the petitioner was in jail from 30.06.2014 to 08.07.2015 and thereafter from 21.12.2016 till date.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

<https://www.mhc.tn.gov.in/> Recently, the Hon'ble Supreme Court in **Satender Kumar Antil**



vs. Central Bureau of Investigation and another reported **2**
LiveLaw (SC) 577 has specifically held that the word 'trial' will have to be given an expanded meaning, particularly when an appeal or admission is pending and the relevant passages are extracted hereunder:-

"46. Section 436A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word 'trial' will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word 'shall' clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that 'bail is the rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This court in *Bhim Singh v. Union of India*, (2015) 13 SCC 605, while dealing with the aforesaid provision, has directed that:

"5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under



Section 436-A. 6. We, accordingly, direct jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance."

10. In the above decision, the Hon'ble Supreme Court went to the extent of saying that the provision contained in Section 436A of the Code would apply to the Special Acts also.

11. In the case on hand also, the petitioner has already undergone nearly 7 years.

12. Considering the above and also the fact that the petitioner is in incarceration for more than 7 years, this Court is inclined to suspend the sentence imposed on the petitioner.

13. In the result, this Criminal Miscellaneous Petition is allowed. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge for Sexual Offences against Children Special Court, Thanjavur;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and



(iii) The petitioner shall appear before the trial Court daily at 10.30 a.m., till the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
17/03/2023

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17/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM
TO

- 1 THE SESSIONS JUDGE
FOR SEXUAL OFFENCES AGAINST CHILDREN SPECIAL COURT,
THANJAVUR
- 2 THE INSPECTOR OF POLICE
AMMAPETTAI POLICE STATION,
THANJAVUR DISTRICT.
- 3 THE OFFICER INCHARGE,
PUDUKKOTTAI BORSTAL SCHOOL AND
DISTRICT JAIL
PUDUKKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to MR.E.SOMASUNDARAM, Advocate SR.No.4543(I)

ORDER
IN
CRL MP(MD) No.4192 of 2023
in
CRL A(MD)No. 446 of 2022
Date :17/03/2023

PKP/MMS/SAR- /17.03.2023/ **5P/6C**