

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Ninth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice C. T. SELVAM

CRIMINAL MISCELLANEOUS PETITION No.106 & 108 of 2018

IN CRL RC.23/2018

KARUNAMOORTHY,

[PETITIONER]

Vs

THE INSPECTOR OF POLICE
CBCID, CHENNAI.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.23/2018 on the file of the High Court, the High Court will be pleased to

(i)suspend the sentence in C.A.No.70/10 dt.20.12.17 passed by the learned VII Additional Sessions Judge at Chennai by confirming the Judgment passed by the learned II Metropolitan Magistrate, Egmore, Chennai in C.C.No.6111/2003 and release him on bail till the disposal of the above Criminal Revision Petition. (Crl.MP.No.106/2018)

(ii) exempt the petitioners surrender before the trial court in C.C.No.6111/2003 Judgment passed by the Learned II Metropolitan Magistrate, Egmore, Chennai. (Crl.MP.No.108/2018)

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC. No.23/2018 on the file of the High Court and upon hearing the arguments of M/S.R.C.PAUL KANAGARAJ, Advocate for the petitioner and of MR. V. ARUL, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

Petitioner / A2 faced trial in C.C.No.6111/2003 on the file of the Court of learned II Metropolitan Magistrate, Egmore, Chennai. The Trial Court, under judgment dated 26.03.2010, convicted the petitioner for the commission of the offences

u/s.120(B), 420, 467, 468 and 471 IPC and sentenced him to undergo two years Rigorous imprisonment and to pay a fine of Rs.1,000/- each offence for offences u/s.467, 468, 471 IPC and to undergo One year rigorous imprisonment for the offence u/s.420 IPC and to undergo Six months rigorous imprisonment for the offence u/s.120(B) IPC. There against, petitioner preferred an appeal in C.A.No.70/2010 on the file of VII Additional Sessions Judge, Chennai, which came to be dismissed under judgment dated 20.12.2017. This miscellaneous petition has been filed seeking suspension of sentence.

2 Learned counsel for petitioner submits that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's surrender or being in confinement in availing the relief of suspension of sentence under Section 397 Cr.P.C. in exercise of revisional powers by this Court. The decisions of the Honourable Apex Court in **BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cri) 1380)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3 Heard learned Additional Public Prosecutor on the submissions made by learned counsel for petitioner.

4 The above decisions have been relied upon time and again by this Court towards reaching the conclusion that in moving a revision against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

5 Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the revision as contended by learned counsel for petitioner and further the revision is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

6 Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned II Metropolitan Magistrate, Egmore, Chennai, and on further condition that the petitioner shall appear before the said Court

on the first working day of every month at 10.30 a.m. pending revision.

-sd/-
09/01/2018

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 II METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI (FOR INFORMATION)

3 THE VII ADDITIONAL
SESSIONS JUDGE AT CHENNAI

4 THE INSPECTOR OF POLICE
CBCID, CHENNAI.

+1 C.C. to M/S.R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges Sr.No.477

Order
in
CRL MP.106 & 108/2018

in
CRL RC.23/2018

Date :09/01/2018

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MD: 11/01/2018