

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fifteenth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.9758 of 2017

IN CRL A.429/2015

VINAYAGAM,

[PETITIONER]

Vs

THE STATE OF TAMIL NADU,
REP BY ITS INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VILLUPURAM, DISTRICT
CR.NO.6 OF 2013.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.429/2015 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Learned Sessions Judge Magalir Neethimandram (Fast Track Court) Villupuram in Spl.S.C.No.1 of 2014 dated 14.05.2015 and enlarge the petitioner on bail pending the disposal of the above Criminal Appeal No.429 of 2015.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.429/2015 on the file of the High Court and upon hearing the arguments of M/S.M.DEVARAJ Advocate for the petitioner and of Mrs.T.P.SAVITHA Government Advocate[Crl.side] on behalf of the Respondent the court made the following order:-

Petitioner was convicted for offence under Section 4 of POSCO Act and sentenced to undergo seven years R.I. and to pay a fine of Rs.500/- in default to undergo one month S.I. by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Villupuram in Special S.C.No.1 of 2014 dated 14.05.2015. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for the 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 389(1) of 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. He would further submit that the petitioner has already paid a fine amount of Rs.500/- before the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Villupuram, since the petitioner/appellant is in jail from the date of conviction i.e. from 14.05.2015 onwards almost three years.

3. The learned Government Advocate (Criminal Side) would strongly objected for releasing the accused on bail, since it is reported by the learned Government Advocate (Criminal Side) that the counter was already filed on 06.06.2015.

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 appeal.

5. Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal as contended by learned counsel for petitioner and further the appeal 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 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 Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Villupuram and on further condition that the petitioner shall appear before the said Court once in a week i.e., on every Monday at 10.30 a.m. until further orders.

7. Post the main Appeal for final hearing on 18.04.2018. The appearance of the Inspector of Police is dispensed with.

-sd/-
15/03/2018

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 SESSIONS JUDGE
MAGALIR NETHIMANDRAM[FAST TRACK MAHILA
COURT] VILLUPURAM

2 THE CHIEF JUDICIAL MAGISTRATE
VILUPURAM[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE STATE OF TAMIL NADU,
REP BY ITS INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VILLUPURAM, DISTRICT

5 THE SUPERINTENDENT
CENTRAL PRISON,CUDALORE

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

Order

in
CRL MP.9758/2017

in
CRL A.429/2015

Date :15/03/2018

From 7.2.2001 the Registry is issuing certified
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RD 16/03/2018