

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice C. T. SELVAM

CRIMINAL MISCELLANEOUS PETITION No.33 of 2018

IN CRL RC.8/2018

J.KURIAKOSE,

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
UTHIYUR POLICE STATION,
TIRUPUR DISTRICT.
CR.NO.151/2012.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.8/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the judgement dated 08.11.2016 made in C.C.No.132/2013 on the file of the Learned Judicial Magistrate, Kangayam, Tirupur District, which was confirmed in the judgement dated 31.10.2017 made in C.A.No.122/2016 on the file of III Additional District and Session Court, Tirupur at Dharapuram and enlarge him on Bail, pending disposal of the above Criminal Revision Petition.[CRL.MP.NO.33/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.8/2018 on the file of the High Court and upon hearing the arguments of M/S.P.M.DURAI SWAMY Advocate for the petitioner and of MR.V.ARUL ADDL.PUBLIC PROSECUTOR on behalf of the Respondent, the court made the following order:-

Petitioner/accused was convicted for offences under section 279, 304(A) (2 counts) IPC and sentenced to 1 year R.I for offence u/s 304 (A) IPC each and to pay fine of Rs.4,000/- i/d 3 months S.I. by learned Judicial Magistrate, Kangayam, under judgment in C.C.No.132 of 2013 dated 08.11.2016. The appeal preferred by petitioner in C.A.No.122 of 2016 on the file of learned III Additional District and Sessions Judge, Tirupur at Dharapuram, came to be dismissed under judgment dated 31.10.2017. Hence, petitioner seeks 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 Judicial Magistrate, Kangeyam, Tirupur District, 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/-

05/01/2018

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 JUDICIAL MAGISTRATE,
KANGEYAM, TIRUPPUR DISTRICT

2 THE III ADDITIONAL DISTRICT AN
SESSIONS JUDGE, TIRUPUR AT
DHARAPURAM

3 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR [FOR INFORMATION]

4 STATE BY
THE INSPECTOR OF POLICE,
UTHIYUR POLICE STATION,
TIRUPUR DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS

1 C.C. to M/S.P.M. DURAISWAMY Advocate on payment of necessary
charges SR.NO. 221

Order

in
CRL MP.33/2018

in
CRL RC.8/2018

Date : 05/01/2018

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RD 08/01/2018