

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Nineteenth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3375 of 2018

IN CRL A.196/2017

1 CHENNAKRISHNAN, [PETITIONERS]
2 SURESH

Vs

THE STATE REP BY ITS, [RESPONDENT]
THE INSPECTOR OF POLICE, KUMARAPALAYAM
POLICE STATION, NAMAKKAL, DISTRICT
CR.NO.440 OF 2010.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.196/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.NO.78 of 2011 on the file of Additional Sessions Judge, Namakkal, and ENLARGE THE PETITIONERS ON BAIL PENDING disposal of the above Crl.A.No.196 of 2017 on the file of this Honble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A. No.196/2017 on the file of the High Court and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the petitioner and of MR.T. SHANMUGA RAJESHWARAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

This is the second petition filed to suspend the sentence imposed against the petitioner in S.C.No.78 of 2011 by the judgement of the learned Additional Sessions Judge, Namakkal, dated 14.03.2017.

2.The first such petition was filed in Crl.M.P.No.15770 of 2017. In the earlier occasion, the very same petitioners have filed a petition in Crl.M.P.No.4794 of 2017 in Crl.A.No.196 of 2017 seeking to suspend the sentence imposed by the he learned Additional Sessions Judge, Namakkal.

3.The said petition was considered by the learned Judge of this Court and an order was passed on 17.07.2017, wherein the learned Judge, having considered the points raised by the petitioners/appellants to consider the plea to suspend the sentence, has dismissed the said petition by mentioning out the said points raised by the petitioners counsel.

4.Since the present petition is also for the relief of suspension of sentence, Mr.R.Sankarasubbu, the learned counsel for the petitioners/appellants has submitted that at the time of earlier petition, which was dismissed by the learned Judge, the petitioners were in Jail only for three months, now, almost for one year they have been in jail and therefore considering these circumstances, this petition can be considered. The learned counsel would further submit that the identification parade, which has not been taken place prior to the identification of the accused by the witness at the Court and since the said non-conducting of the identification parade is fatal to the prosecution case, said factum can also be taken into account. Further, the learned counsel for the petitioners/appellants relying upon the judgement of the Hon'ble Apex Court in **Abdul Rehman Antulay and others Vs.R.S.Nayak and another** reported in **1992 (1) SCC 225**, has made his submission that, the right of speedy trial flowing from Article 21 would encompass all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. Therefore, if the said principle is applied to the present case as the petitioners have been in jail for one year, even, in this appeal also, the right of speedy trial flowing from Article 21 of the Constitution of India is always available to the petitioners/appellants. Therefore, the learned counsel would submit that, unless speedy disposal of this appeal is made possible in the near future, the benefit of suspension of sentence of the accused can be extended to the petitioners taking into account the right of speedy trial under Article 21 of the Constitution of India .

5.I have heard the learned Government Advocate (Crl.side) also on the points raised by the learned counsel for the petitioners/appellants.

6.Though the points on the merits of the case seeking of suspension of sentence since has already been made by the learned Judge in the order dated 17.07.2017, including the point of identification parade, I am not inclined to hear the said issues once again for the purpose of considering the present plea of suspension of sentence. However, insofar as the right of the person for a speedy trial, it would also be applicable at the stage of appeal also as has been enunciated by the Hon'ble Apex Court in AIR cited supra.

7.The only course of action, at the best available before this Court, is to take up the main appeal at an earlier point of time and decide it on merits, since the Court has already rejected the plea of suspension of sentence by the said order of the learned Judge dated 17.07.2017.

8.In the said view of the matter, the main appeal itself shall be posted for Final Hearing in April 2018.

9.In view of the above, this petition is dismissed.

-sd/-

19/03/2018

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 ADDL. SESSIONS JUDGE
NAMAKKAL

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE STATE REP BY ITS,
THE INSPECTOR OF POLICE, KUMARAPALAYAM
POLICE STATION, NAMAKKAL, DISTRICT

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

Order

in

CRL MP.3375/2018

in

CRL A.196/2017

Date :19/03/2018

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MD: 23/03/2018