

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Friday, the Twenty Sixth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION NOS.9798 & 9799 OF 2019

IN CRL RC.995 & 1021 OF 2018

P.KUMAR

[ PETITIONER  
IN CRL.MP.NO.9798 OF 2019  
IN CRL.RC.NO.995 OF 2018 ]

PACHAIAPPAN

[ PETITIONER  
IN CRL.MP.NO.9799 OF 2019  
IN CRL.RC.NO.1021 OF 2018 ]

Vs

STATE REP BY  
INSPECTOR OF POLICE,  
CBI/SCB, CHENNAI.

[ RESPONDENT  
IN CRL.MP.NO.9798 OF 2019  
IN CRL.RC.NO.995 OF 2018 ]

STATE REP BY  
INSPECTOR OF POLICE,  
CBI/SCB, CHENNAI.  
CRIME NO.02 OF 2015

[ RESPONDENT  
IN CRL.MP.NO.9799 OF 2019  
IN CRL.RC.NO.1021 OF 2018 ]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL RC NOS.995 & 1021 OF 2018 on the file of the High Court, the High Court will be pleased to

[I] suspend the sentence imposed in C.A.No.91/2017 by the Learned II Additional Sessions Judge, Puducherry by Judgment dated 18/05/2017 confirming the sentence imposed in C.C.No.71/2015 on the file of Chief Judicial Magistrate at Puducherry and release the petitioner on Bail in CRL.RC.NO.995 OF 2018 [IN CRL.MP.NO.9798 OF 2019

[II] suspend the order of sentence dated 18/05/2017 made in C.C.No.71/2015 passed by the learned Chief Judicial Magistrate at Puducherry as confirmed by a Judgment dated 13.08.2018 made in Crl.A.No.19 of 2017 passed by the Learned II Additional Sessions Judge at Puducherry and grant bail to the petitioner pending disposal of main CRL.RC.NO.1021 OF 2018 [IN CRL.MP.NO.9799 OF 2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL RC NOS.995 & 1021 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.SUNDER MOHAN, Advocate [IN CRL.MP.NO.9798 OF 2019 IN CRL.RC.NO.995 OF 2018] and M/S.SATHISH RAJAN S., Advocate [IN CRL.MP.NO.9799 OF 2019 IN CRL.RC.NO.1021 OF 2018] for the petitioner and of MR.K.SRINIVASAN SPECIAL PUBLIC PROSECUTOR FOR CBI CASES on behalf of the Respondent [IN BOTH THE PETITIONS] the court made the following order:-

The petitions have been filed by the petitioners to suspend the sentence of imprisonment imposed on them vide judgment dated 18.05.2017 in C.A.No.91 of 2017 (in respect of the petitioner in Crl.M.P.No/9798 of 2019) and dated 13.08.2018 in C.A.No.19 of 2017 (in respect of the petitioner in Crl.M.P.No.9799 of 2019) on the file of the learned II Additional Sessions Judge, Puducherry, where by the appellate Court confirmed the order passed by the learned Chief Judicial Magistrate, Puducherry in C.C.No.71 of 2015 dated 18.05.2017, wherein the petitioners were convicted for the offence punishable under Sections 120-B, 419, 468, 471, 420 and 181 IPC r/w 34 IPC and to undergo Simple Imprisonment for one year with a fine of Rs.500/-.

2. The learned counsel for the petitioners would submit that the petitioners were convicted for the offence as stated above and were sentenced to undergo a maximum period of one year Simple Imprisonment. The learned counsel would further submit that consequent to the order passed by the trial Court, the petitioners have filed Revisions before this Court in Crl.R.C.No.995 of 2018 and 1021 of 2018 and this Court, by Order dated 25.09.2018 in Crl.M.P.Nos.11602 of 2018 and 995 of 2018, had granted exemption to the petitioners from surrendering before the trial Court till 10.12.2018 and had fixed the date for final hearing of the Revisions on 03.12.2018. However, the Revisions have not been listed for final hearing on 03.12.2018. The petitioners, on the bona fide impression that the Revisions will be taken up for final hearing on 03.12.2018 have not surrendered before the trial Court. In the meanwhile, the case has also not been listed and no further extension of time was sought for by the petitioners seeking exemption from surrendering before the trial Court. While so, they were arrested on 17.07.2019. He would further submit that the petitioners' failure to surrender before the trial court is neither wilful nor wanton.

3. The learned counsel would further submit that the maximum sentence imposed by the trial Court is for a period of one year and they have got valid, legal and arguable points in the Revisions and both the Courts have not taken into consideration the evidence of witnesses in proper perspective. The learned counsel for the petitioners would further submit that as stated above, the petitioners have been charged for the offence punishable under Secs.120B, 419, 468, 471, 420, 181 IPC r/w 34 IPC. He would further submit that in respect of the offence under Sec.181 of IPC, as per Section 195(a)(1) of Criminal Procedure Code, the provision is very clear, that no Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. He would further submit that when there is a specific provision regarding taking a complaint for the offence under Section 181 IPC, the respondent ought not to have registered a case against the petitioners without any complaint being made by the lawful authority.

4. The learned counsel would further submit that there is every chance of the petitioners succeeding in the Revisions and further submit that if the sentence is not suspended and the petitioners are not released on bail it will cause serious prejudice to them. He would further submit that the maximum period of sentence is one year Simple Imprisonment and the petitioners are ready to get along with the Revisions as and when they are listed for final hearing.

5. The learned Special Public Prosecutor for CBI Cases vehemently opposed for granting the relief sought for by the petitioners. He would submit that the petitioners were granted exemption to surrender before the trial Court till 10.12.2018 by order dated 25.09.2018 in CrI.M.P.Nos.11602 and 995 of 2018. However, the petitioners have not filed any petition, seeking for further extension of time for exempting themselves from surrendering before the trial Court. The respondent with sincere and painstaking efforts located the petitioners and arrested them on 17.07.2019. He would further submit that if the sentence is suspended and the petitioners are let on bail, there is a possibility of the petitioners absconding and escaping from the clutches of Law.

6. Considering the submissions made by the learned counsel for the petitioners and also taking note of the facts that the sentence is only for a period of one year and this Court, on earlier occasion had exempted the petitioners from surrendering before the trial Court till 10.12.2018 by order dated 25.09.2018, I am inclined to suspend the sentence.

7. Accordingly, substantive sentences of imprisonment alone is suspended till the disposal of the Revisions and the petitioners are ordered to be enlarged on bail on each of them executing a bond for Rs.25,000/- [Rupees Twenty five Thousand only] with two sureties each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Puducherry and on further condition that the petitioners shall report before the trial Court on the first working day of every English Calendar month at 10.30 a.m., pending Revisions.

-sd/-

26/07/2019

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 CHIEF JUDICIAL MAGISTRATE  
PUDUCHERRY.

2 THE II ADDITIONAL SESSIONS JUDGE,  
PUDUCHERRY.

3 THE SUPERINTENDENT,  
CENTRAL PRISON, PUDUCHERRY.

4 THE SPECIAL PUBLIC PROSECUTOR FOR  
PUDUCHERRY.

5 THE INSPECTOR OF POLICE,  
CBI/SCB, CHENNAI.

+1C.C. to M/S.SUNDER MOHAN Advocate on payment of necessary charges SR NO.15499

+1C.C. to M/S.M/S.SATHISH RAJAN S. Advocate on payment of necessary charges SR NO.15488

Order

in  
CRL MP.9798 & 9799 OF 2019

in  
CRL RC.995 & 1021 OF 2018

Date :26/07/2019

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