

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twentieth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.13605 of 2019

IN CRL.A.NO.631 OF 2019

R.RAJENDRAN

[PETITIONER / APPELLANT / ACCUSED]

Vs

STATE REP. BY [RESPONDENT]
THE ASSISTANT COMMISSIONER OF POLICE,
TRAFFIC INVESTIGATION WING,
ASHOK NAGAR,
CHENNAI-6000 083.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.631 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of conviction of imprisonment of 5 years passed against the Accused by the learned Mahila Court / Special Court for cases under POCSO Act/Children Court, Chennai-600 104 in S.C.No.156 of 2017 dated 05.09.2019 and release the appellant on bail pending disposal of the above CRL.A.NO.631 OF 2019 [IN CRL.MP.NO.13605 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.631 OF 2019 on the file of the High Court and upon hearing the arguments of M/S. K.K.ANANTHAPADMANABAN, Advocate for the petitioner and of MR.M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

- 1.This Criminal Miscellaneous Petition has been filed by the Petitioner/A1, seeking suspension of sentence of imprisonment, imposed by the judgment, dated, 05.09.2019, made in S.C.No.156 of 2017, by the Mahila Court/Special Court for cases under Posco Act/Children's Court, Chennai - 104, pending disposal of the Criminal Appeal.
- 2.This court heard the learned counsel on either side and also perused the materials placed on record.

3.The brief facts of the case is that the first accused was the driver of the water tanker lorry bearing Registration No.TN.20BT.8622 and the second accused was the cleaner of the said lorry. On 13.10.2016, the first accused drove the lorry in a rash and negligent manner and hit against the pedestrians Chitra, Asha Sruthi and Gayathri, who are the students of Chellammal College and caused death of the said three students. Further, the first accused has also hit on the another student by name Jayashree and one Savar Rai (65 years) who was driving motor cycle bearing registration No. TN.02Y.5473 and caused grievous injuries to them. Thereafter, the first accused hit against the another student by name Meena, Omanakuttan, who was driving Activa Scooter bearing No. TN.09CE.2017 and Subramanian, who was driving Auto bearing Registration No. TN.06B.9739 and caused simple injuries to them. After causing the accident in the above said manner, the accused had failed to give first-aid to the injured persons and also failed to inform the matter to the police. Hence, after investigation, the Assistant Commissioner of Police, Traffic investigation Wing, J3 Guindy P.S., Chennai, has filed charge sheet under Section 279, 304(ii) (three counts), 338 (two counts), 337 (three counts) of IPC, Sections 134 (a) read with section 187 and 134(b) read with Section 187 of Motor Vehicles Act, against the first accused and under Section 279 read with Sections 109, 304 (ii) (three counts) read with Sections 109, 338 (two counts) read with Sections, 109, 337 (three counts) read with sections 109 of IPC, Section 134 (a) read with Section 187 and 134(b) read with Section 187 of Motor vehicles Act against the second accused. The case after committal was tried by the Mahila Court/Special Court for cases under Posco Act/Children's Court in S.C.No.156 of 2016.

4.In and by the impugned judgement, the Petitioner/ A1 was found guilty and convicted and sentenced for the offence as under:

S.No	Conviction	Sentence
1.	U/s.279 of IPC	6 months S.I and fine of Rs.1,000/-, in default to under go, one month S.I
2.	U/s.304(ii) of IPC (three counts)	for each count, 5 years S.I. and fine of Rs.5,000/-, in default to under go 6 months S.I
3.	U/s.338 of IPC (two counts)	For each count 1 year S.I and fine of Rs.1,000/- in default to undergo two months S.I.
4.	U/s.337 of IPC (three counts)	For each count three months S.I and fine of Rs.500/- in default to undergo two months S.I.

S.No	Conviction	Sentence
5.	U/s. 187 (two counts) read with 134 (a) of the Motor Vehicles Act	One month S.I. and to pay a fine of Rs.500/-, in default to under go one week S.I
6.	U/s. 187 (two counts) read with 134 (b) of the Motor Vehicles Act	One month S.I. and to pay a fine of Rs.500/-, in default to under go one week S.I

5.The learned counsel for the petitioner would submit that the Trial Court erred in framing charges and convicting the petitioner/A1 for the offences under Section 304(ii) of IPC. Further, the prosecution had not proved by evidence that the petitioner had knowledge and intention that his act would result in causing the death of the victims. The Trial Court failed to taken into consideration the evidence of PW12/Motor Vehicle Inspector, who has deposed that the brake system of the vehicle did not operate due to tampering in the brakes and it is the categoric admission of PW12 that since the brake wire was tampered, the vehicle did not stop. Further, the Trial Court placed its finding based on assumptions that the impact of the accident proved that the petitioner had driven the vehicle recklessly unmindful of the traffic conditions of the place of occurrence and thereby, concluded that he had knowledge that it is likely to cause death or to cause such bodily injury to the victims. He would submit that the petitioner was on bail during trial and that he has not violated or breached any of the conditions. He would pray for suspension of sentence. He would also submit that the petitioner was in jail for 1 ½ month during the period of remand and thereafter after conviction he was inside the prison for more than four months and that, there are arguable points available in the Criminal Appeal, which is not likely to be taken for final hearing in the near future and the Petitioner/ A1 has got a fair chance of succeeding in the Criminal Appeal and hence, the substantive sentence imposed against the Petitioner/A1 may be suspended.

6.The respondent had filed a counter stating that the petitioner who is a driver of a metro water tanker lorry, had driven the vehicle recklessly unmindful of the traffic conditions, thereby, causing death of three college going students and causing injury to the other victims.

7.The learned Additional Public Prosecutor would vehemently opposed grant of suspension of sentence by contending that the petitioner, who is a metro water tanker driver had driven the vehicle in a reckless manner with the knowledge and intention that his act would be dangerous to the lives of the pedestrians and other vehicle owners and would submit that due to the act of the petitioner three lives have been lost and suffer other persons have sustained injuries.

8. Heard both sides and perused the materials placed on record.

9.This is a case where, the petitioner, who is a metro water tanker lorry driver, had driven the vehicle in a rash and negligent manner and caused the death of three persons and also injury to several other persons. The petitioner has been granted bail during the trial and that after conviction, he has been in imprisonment for past four months. This Court is of the view that the petitioner has made out grounds for granting suspension of sentence.

10. Taking into consideration the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the substantive sentence of imprisonment alone is suspended and the Petitioner/ A1 is ordered to be enlarged on bail, on the following conditions:-

i. The Petitioner/ A1 shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only), with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate No.XVIII, Saidapet, Chennai.

ii.The Petitioner//A1 shall report before the Trial Court on every Monday at 10.30 a.m., if Monday is holiday, the petitioner shall appear on the next working day, until further orders.

-sd/-
20/11/2019

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 MAHILA COURT/SPECIAL
COURT FOR CASES UNDER POSCO
ACT/CHILDRENS COURT, CHENNAI-104.

2 THE JUDICIAL MAGISTRATE,
NO.XVII, SAIDAPET, CHENNAI.

3 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE ASSISTANT COMMISSIONER OF POLICE,
TRAFFIC INVESTIGATION WING,
ASHOK NAGAR, CHENNAI-600 083.

+1C.C. to M/S. K.K.ANANTHAPADMANABAN Advocate on payment of
necessary charges SR NO.23910

Order

in
CRL MP.13605/2019
in
CRL.A.NO.631/2019

Date :20/11/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:21/11/2019

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