

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twentieth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION NoS.15227 15229, 15231, 15232,
15228 & 15230/2019

in CrI.R.C.Nos.1135, 1136 & 1137/2019

SUNDARRAJAN

[PETITIONER

IN ALL THE PETITIONS]

Vs

STATE REP BY

[RESPONDENT

SUB-INSPECTOR OF POLICE, IN ALL THE PETITIONS]

CHIDAMBARAM TOWN POLICE STATION,

CHIDAMBARAM, CUDDALORE DISTRICT.

CR.NO.165/2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case Nos.1135,1136 & 1137/2019 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence passed by the learned II Addl.District and Sessions Judge, Chidambaram in C.A.No.51,52,49/2019 judgment dated 14.08.2019 and enlarge the petitioner on bail, confirming the judgment passed in CC No.266,84,52/2017 on the files of Judicial Magistrate No.2, Chidambaram dated 18.02.2019 pending disposal of the above criminal revision.[CRL.MP.NOS.15227,15229,15231/2019]

[II]exempt the petitioner from surrendering judgemnt dated 14.08.2019 passed in C.A.NO.49,52,51 OF 2019 on the file of the learned II Addl.district and session Judge,chidambaram confirming the judgement dated 18.02.2019 paased in C.C.NO.52,84,266 OF 2017 on the file of Judicial Magistrate No.2, chidambaram pending disposal of criminal Revision.[CRL.MP.NO.15232,15228 & 15230/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CrI.Revision Case No.1135,1136 & 1137/2019 on the file of the High Court and upon hearing the arguments of MR.M/S.G.S.DHANALAKSHMI Advocate for the petitioner [IN ALL THE PETITIONS]and of MR.K.PRABAKAR ADDL. PUBLIC PROSECUTOR [IN ALL THE PETITIONS]on behalf of the Respondent the court made the following order:-

The petitioners faced trial in C.C.Nos.266, 84 and 52 of 2017 on the file of learned Judicial Magistrate No.II, Chidambaram. Under judgments dated 18.02.2019, the trial Court found the petitioners guilty under Section 379, 380, 379 of the IPC, respectively, and sentenced him to undergo Rigorous imprisonment for a period of two

years. Aggrieved over the same, the petitioners have filed Criminal Appeal Nos.51, 52 and 49 of 2019 on the file of the learned II Additional District and Sessions Judge, Chidambaram, and the appellate court, by the judgment dated 14.08.2019, has confirmed the convictions and sentences imposed on the petitioners and dismissed the Appeals. Challenging the same, these Civil Revision Cases have been filed by the petitioners, along with the petitions seeking suspension of sentence and exemption from surrendering before the trial court.

2. It is submitted by the learned counsel for the petitioner/accused that the petitioners are in prison from 19.11.2019; there are several infirmities and inconsistencies in the prosecution case and there are also contradictions in material particulars in the evidence of the prosecution. He also submitted that there are arguable points available in these Criminal Appeals, which are not likely to be taken up for final hearing in the near future and hence the substantive sentence imposed against the petitioners may be suspended.

3. Heard learned Additional Public Prosecutor on the submissions made by the learned counsel for petitioners.

4. At this juncture, it is relevant to point out that the Supreme Court, in the case of *Bihari Prasad Singh v. State of Bihar and another* [2000 SCC (Cr1) 1380], was of the view that while seeking the relief of suspension of sentence, the accused need not necessarily be under confinement. Further, in the case of *Ibrahim v. State of Kerala* [1979 KLT 857], it was held that for grant of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the powers contemplated under Section 397(1)Cr.P.C, as the said provision itself is very unequivocal and unambiguous.

5. In the light of the aforesaid legal propositions, considering the facts and circumstances of the case and also taking note of 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, apart from exemption from surrendering, subject to certain conditions. Accordingly, till the disposal of the Criminal Revision Cases, the reliefs of exemption from surrender before the Trial Court, suspension of sentence and bail are granted, on the following conditions:-

a) Each of the Petitioners/Accused are directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Chidambaram;

b) The Petitioners/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities;

c)The Petitioners / Accused shall appear before the respondent / Police, on every Monday (once in a week) by evening (probably at 06.00 pm), until the disposal of the Appeals and if they are not able to appear before the Trial Court on any Monday, due to unavoidable circumstances, they shall make arrangements to file an application under Section 317 of Cr.PC. and shall appear before the Trial Court on any other day in lieu of his absence, as directed by the Trial Court. Such an application shall not be entertained often.

-sd/-

20/12/2019

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 JUDICIAL MAGISTRATE,
NO.II, CHIDAMBARAM

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE[FOR INFORMATION]

3 II ADDL.DISTRICT AND SESSIONS JUDGE,
CHIDAMBARAM

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 SUB-INSPECTOR OF POLICE,
CHIDAMBARAM TOWN POLICE STATION,
CHIDAMBARAM, CUDDALORE DISTRICT.

+3 C.C. to M/S.G.S.DHANALAKSHMI Advocate on payment of
necessary charges SR.NO. 26369,26370,26371

Order

in

CRL MP.NOS. 1522715229, 15231, 15232, 15228 & 15230/2019

in Crl.R.C.Nos.1135, 1136 & 1137/2019

Date :20/12/2019

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