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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.08.2021
Pronounced on	13.08.2021

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

and

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.M.P.No.5567 of 2020

in

Crl.A.No.512 of 2019

1.Krishnappa (A1) Appellants
2.Narayanan @ Narayanappa (A3)

Versus

State rep.by Respondent
The Inspector of Police,
Denkanikottai Circle,
Thali Police Station,
Krishnagiri District.
(Crime No.121 of 2002)

Prayer: Criminal Miscellaneous Petition is filed under Section 389(i)r/w of Code of Criminal Procedure, to set aside the conviction and sentence imposed as against A1 and A3 in S.C.No.4 of 2005, dated 26.03.2019 on the file of the Special Court for Bomb blast cases Chennai at Poonamalee and to enlarge the petitioners on bail.

For Appellants : Mr.R.Sankara Subbu

For Respondent : Mr.R.Muniyapparaj,

Government Advocate (crl.side)

ORDER

R.N.MANJULA, J.

The case of the prosecution is that these petitioners / A1 and A3 along with other accused conspired and committed the offences and in that course attacked the deceased with country gun and knife and murdered him. In the said case, A1 and A3 have been sentenced to undergo the following punishment for the charges proved against



<i>Provision under which convicted</i>	<i>Sentenced the accused</i>
Section 120(B) r/w 302 of IPC., for A1 & A3	(i) To undergo Life Imprisonment and to pay fine of Rs.1,000/- each. (ii) in default to undergo further period of six months Simple Imprisonment.
Section 148 of IPC., for A1 & A3	(i) To undergo 2 years Simple Imprisonment and to pay fine of Rs.500/-. (ii) in default to undergo further period of three months Simple Imprisonment.
Section 302 of IPC., for A1	(i) To undergo Life Imprisonment and to pay fine of Rs.2,000/-. (ii) in default to undergo further period of six months Simple Imprisonment.
Section 302 read with Section 149 of IPC., for A3	(i) To undergo Life Imprisonment and to pay fine of Rs.2,000/-. (ii) in default to undergo further period of six months Simple Imprisonment.
Section 337 of IPC., for A3	(i) To undergo three months Simple Imprisonment and to pay fine of Rs.300/-. (ii) in default to undergo further period of one month Simple Imprisonment.
Section 3 of Explosives Substances Act, for A3	(i) To undergo 10 years Rigorous Imprisonment and to pay fine of Rs.2000/-. (ii) in default to undergo further period of three months Simple Imprisonment.

2. Challenging the above conviction and sentences, the petitioners / Appellants /Accused A1 & A3 have filed the Criminal Appeal. Pending the appeal, this miscellaneous petition has been filed seeking for suspension of sentence and to enlarge them on bail.



3. Heard, Mr.Sankara Subbu, learned counsel for the petitioners/accused A1 & A3 and Mr.R.Muniyapparaj, learned Government Advocate (crl.side), appearing for the respondent.

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4. On receipt of the notice, the learned Government Advocate (Crl.side) appearing for the respondent has vehemently opposed to suspend the sentence by stating that the offence is heinous in nature and that the earlier application filed for the appellants for the same relief has been dismissed.

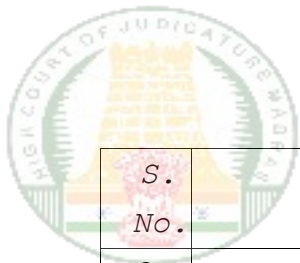
5. In this case, the petitioners were members of a Community party (M.C.C.) and the deceased Venkatesan was also from the same party. With the active help of the accused party, Venkatesan won the panchayat election in 1996 and became the Chairman of Thali Panchayat. Thereafter, it is alleged that Venkatesan defected to the D.M.K. and refused to give any donation to M.C.C. Therefore, the accused party made an attempt on the life of Venkatesan once, but, he survived. In connection with that, a case under Section 307 IPC was registered against the first petitioner herein and others. It appears that on 08.05.2002, the petitioners herein and others fatally attacked Venkatesan with country bombs and other weapons and have been convicted of the same.

6. The learned counsel for the appellants submitted that the petitioners are not involved in the criminal conspiracy and no injury was caused by these petitioners as alleged by the prosecution. The petitioners have been in incarceration for more than 2 years. The appeal filed by these petitioners have got substantial grounds which require a detailed appraisal. Since the hearing of the Appeal can not be heard immediately, the sentence imposed against the accused should be suspended and the petitioners should be released on bail. This is the second petition filed to suspend the sentence.

7. It is further submitted by the learned counsel for the petitioners that the delay in hearing the Appeal should not affect the right of the accused to be released on bail. Since early hearing forms part of the right to personal life and personal liberty, the prayer of the petitioners should be considered favourably.

8. The learned counsel for the appellants / petitioners further cited that the following judgments in respect of his submission that if the accused has filed an appeal challenging the conviction he has got a right to get the Sentence suspended until the appeal is heard and disposed.

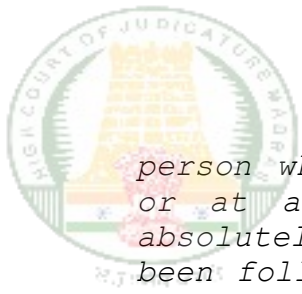
S. No.	Name of the parties	Reported in
1	Kashmira Singh v. State of Punjab	1977 SCC (Cri) 559
2	State v. Captain Jagjit Singh	2001 SCC (Cri) 704



S. No.	Name of the parties	Reported in
3	SOMESH CHAURASIA Appellant(s) VERSUS STATE OF M.P. & ANR. Respondent(s)	Criminal Appeal Nos 590-591 of 2021 @ SLP (Crl) Nos. 4998-4999 of 2021

9. In the decision reported in 1977 SCC (Cri) 559 (*Kashmira Singh v. State of Punjab*), it has been held as follows:

"2. The appellant contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Penal Code, 1860. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a



person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

10. The other citations relied on by the petitioners is also on the similar line. It is further submitted by the learned counsel for the petitioners that Accused No-6 has also been convicted and the sentence as against him has already suspended and he has been granted with bail. It is to be noted that this case involves several accused. Since these accused have been absconding for a long time, the case as against them had to be split up and the trial had to be conducted separately against the split accused. When the sentence imposed against A6 was suspended, he had undergone incarceration for 6 years and 5 months. Since these petitioners have been absconding, they cannot be tried along with other accused and the case is spilt up against them and after their appearance they have been tried separately and the judgment could be passed only on 26.03.2015.

11. Though it is true that the Appeal has been admitted, the suspension of sentence cannot be an automatic corollary. The position cannot be applied unanimously to all cases and in all circumstances irrespective of the seriousness of the offence and the conduct of the accused during the trial.

12. In Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), (2008) 5 SCC 230, the Supreme Court has considered Kashmira Singh (*supra*) and has held as follows:

"30. In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to



suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

As far as the contention that the co-accused has been granted bail and hence, the petitioners also are entitled to bail, in our considered view, that, by itself, cannot be a reason for granting bail to the petitioners, especially in the light of the evidence on record against them. In this regard, it is worth pointing out that the Supreme Court has very recently held in Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana and another (2021 SCC OnLine SC 335) as under:

"Parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance....."

13. So far as this Appeal is concerned, the paper book is ready and we are ready to take up the Appeal anytime, if the learned counsel for the appellants also cooperates for early disposal. So it need not be presumed that there will be delay in taking up the Appeal for hearing. Since these petitioners / accused had protracted the trial and got the spilt case tried separately, releasing them by suspending the sentence might cause their disappearance once again. So these petitioners cannot claim parity with that accused who had undergone incarceration for more than 6 years and the sentence against whom had been suspended for that reason.

14. Despite this is the second petition filed to suspend the Sentence, we do not find any valid reason or fresh grounds to suspend the sentence. However we would like to impress that it is always open to the learned counsel for the appellants to request for early hearing and for which this Court is ready to accommodate.

In the result this Criminal Miscellaneous Petition in CrI.MP.No.5567 of 2020 is dismissed.

-sd/-
13/08/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.



1 THE SPECIAL COURT FOR
BOMB BLAST CASES CHENNAI AT POONAMALEE.

2 THE INSPECTOR OF POLICE,
DENKANIKOTTAI CIRCLE,
THALI POLICE STATION,
KRISHNAGIRI DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE RECORD KEEPER, CRIMINAL
SECTION, HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

C.C. to R.SANKARASUBBU Advocate on payment of necessary charges

Order

in
CRL MP.5567/2020

in
Crl.A.No.512/2019

Date :13/08/2021

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INBA 17/08/2021