



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the First day of December Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION No.5906 of 2021

IN CRL.A.No.262 of 2021

VANITHA

[PETITIONER/APPELLANT]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KRISHNAGIRI TOWN POLICE STATION,
KRISHNAGIRI.
CRIME NO.622/2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence passed in S.C.No.26/2017 on the file of the Learned Principal Sessions Judge, Krishnagiri dated 30.03.2021 for the proper ends of justice.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.K.V.SUDHIR BABU, Advocate for the Petitioner and of M/S.R.MUNIYAPPARAJ, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

[Order of the Court was made by R.HEMALATHA, J.]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 30.03.2021 passed in S.C.No.26 of 2017 on the file of the Principal Sessions Judge, Krishnagiri and to enlarge the petitioner on bail pending disposal of the appeal in Crl.A.No.262 of 2021.



2.The petitioner, the second accused in S.C.No.26 of 2017 before the Principal Sessions Court, Krishnagiri was convicted and sentenced as follows:

S.No.	Conviction	Sentence
1.	U/s. 302 r/w. 109 of IPC	Life imprisonment and to pay a fine of Rs.500/- in default, to undergo three months rigorous imprisonment
2.	U/s. 201 r/w. 109 of IPC	Three years rigorous imprisonment and to pay a fine of Rs.500/- in default, one month rigorous imprisonment.

Challenging the same, the petitioner filed Crl.A.No.262 of 2021 with the present petition for suspension of sentence and bail.

3.Heard Mr.K.V.Sudhir Babu, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

4.The case of the prosecution is that Vanitha (A2) was married to one Sivanandham who was working in Malaysia. Vanitha and Sivanandham had a male child by name Nathishkumar (deceased) aged 4 years. The first accused Karthik Raja @ Siva Karthik, widower, developed illicit intimacy with Vanitha (A2) and on 17.06.2015 both of them left for Tirupathi, Andhra Pradesh, along with deceased child Nathishkumar. Since Karthik Raja @ Siva Karthik (A1) felt that the very existence of the child would be a hindrance to the continuation of his relationship with Vanitha (A2), he along with A2 planned to eliminate the child and accordingly, A1 kicked the child who fell down and sustained severe injuries and thereafter, the child was done to death by strangulation. The body of the child was also disposed by both the accused between the rocks in Syed Basha Hills, Krishnagiri. The first accused Karthik Raja @ Siva Karthik absconded and therefore, the case against him was split up and the trial was conducted by the learned Principal Sessions Judge, Krishnagiri, against Vanitha (A2). The contention of the learned counsel appearing for the petitioner is that the child went missing in Tirupathi and though the mother searched for the child, she could not trace him. It is also contended that the entire case is based on circumstantial evidence in which there are several missing links.

5. Per contra, the learned Additional Public Prosecutor refuted all the submissions made by the learned counsel for the petitioner.



6. At the outset, it may be observed that the mother Vanitha (A2) did not lodge any police complaint with regard to missing of her child which normally any mother would do. Only during the final hearing of the case, it can be seen whether there are any missing links in the chain of events which led to the conviction of the accused. Similarly, the discrepancies and the contradictions of evidence of various witnesses that were pointed out by the learned counsel for the petitioner cannot be considered in this petition.

13. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), has considered Kashmira Singh vs. State of Punjab 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."

7. In view of the above, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-
01/12/2021

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 PRINCIPAL SESSIONS JUDGE,
KRISHNAGIRI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE INSPECTOR OF POLICE,
KRISHNAGIRI TOWN POLICE STATION,
KRISHNAGIRI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.K.V.SUDHIR BABU Advocate on payment of necessary
charges

Order

in
CRL MP.5906/2021
in
CRL A.262/2021

Date :01/12/2021

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RW 02/12/2021