



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Seventh 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.11507 of 2021

IN CRL.A.NO.533 of 2021

A.SUBRAMANI

[PETITIONER/APPELLANT]

Vs

STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
MALLASAMUDIRAM POLICE STATION,
NAMAKKAL DISTRICT.
(CRIME NO.137/2014)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To Suspend the Sentence who is undergoing conviction in Spl.CC.No.43/2015 dated 22.02.2019 pending disposal of the main Crl.A.No.533 of 2021.

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 V.BALAMURUGAN, 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 P.N.PRAKASH,J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 22.02.2019 in Spl.C.C.No.43 of 2015 on the file of the Sessions Court, (Fast Track Mahila Court), Namakkal and to enlarge the petitioner on bail pending disposal of the above appeal.



2. The petitioner, who was an accused in Spl.C.C.No.43 of 2015 before the Sessions Court, (Fast Track Mahila Court), Namakkal, was convicted and sentenced as follows on 22.02.2019:

S.No.	Provision under which convicted	Sentence
1	Section 363 IPC	Five years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment.
2	Section 5(m) r/w 6 of the POCSO Act	Life imprisonment and fine of Rs.10,000/-, in default to undergo one year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

3. Challenging the aforesaid conviction and sentences, the petitioner has filed Crl.A.No.533 of 2021 along with Crl.M.P.No.11507 of 2021 seeking suspension of sentence and bail.

4. Heard Mr.V.Balamurugan, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the petitioner had sexually abused a eleven year old girl and ravished her.

6. During trial, the victim girl was examined as a witness, but, for the reasons best known to the petitioner, though he was on bail, his lawyer did not cross-examine the victim girl. The trial Court had given sufficient opportunities to the petitioner for cross-examining the prosecution witnesses, but, he did not avail the same. Ultimately, the trial Court has convicted and sentenced the petitioner as stated above.

7. The learned counsel for the petitioner submitted that non-affording of an opportunity for cross-examination would affect the fundamental rights of the accused under Article 21 of the Constitution of India.

8. In this case, the petitioner was on bail during trial and he had engaged a lawyer of his choice to defend himself. The trial Court had given sufficient opportunity to the petitioner for cross-examining the witnesses as could be seen from paragraph no.8 of the trial Court judgment.

9. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of**



Delhi)¹, has considered **Kashmira Singh v. State of Punjab**² 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."

In view of the above reasoning and also taking into consideration the facts and circumstances of the case, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-
07/12/2021

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 SESSIONS (FAST TRACK MAHILA)
JUDGE, NAMAKKAL.

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
MALLASAMUDIRAM POLICE STATION,
NAMAKKAL DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

C.C. to M/S V.BALAMURUGAN Advocate on payment of necessary
charges

Order

in
CRL MP.11507/2021
in
CRL A.533/2021

Date :07/12/2021

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TA-08/12/2021