



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.10.2021
Pronounced on	29.10.2021

CORAM

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

and

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

Crl.M.P.No.10221 of 2021

in

Crl.A.No.283 of 2019

Girija @ Radha

.... Petitioner/A-9

Versus

The State represented by
Deputy Superintendent of Police,
CBCID, Cuddalore,
North Police Station, Cuddalore.
Crime No.1 of 2016 of CBCID

.... Respondent/Complainant

Prayer: Criminal Miscellaneous Petition is filed under Section 389(2) Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in Special Sessions Case No.20 of 2018, dated 04.01.2019 on the file of Mahila Court, Cuddalore and enlarge the petitioner on bail pending disposal of the Criminal Appeal in C.A.No.283 of 2019.

For Appellant : Mr. S.R.Sumathy

For Respondent : Mr.R.Muniyapparaj,
Addl. Public Prosecutor (crl.side)

ORDER

R.N.MANJULA, J.

The case of the prosecution is that the accused worked in tandem to pull two minor victim girls into brothel. The victims were trafficked by several persons to several places and they had been subjected to commercial sex by several men. After completion of the trial the learned trial Judge, Mahila Court, Cuddalore convicted all



the 17 accused. As against this petitioner/A-9 the following charges were proved and she was sentenced to undergo punishment prescribed as under:

Provision under which convicted	Sentenced the accused
Section 6 r/w 17 of POCSO Act 2012 (2 counts)	(i) To undergo 10 years of rigorous imprisonment for each count and to pay fine of Rs.10,000/- for each count. (ii) in default to undergo further period of two years of simple Imprisonment for each default.

2. Challenging the above conviction and sentence, the petitioner/Appellant /A-9 has filed the Criminal Appeal. Pending the appeal, this Miscellaneous Petition has been filed seeking for suspension of sentence and to enlarge her on bail.

3. Heard, M/S S.R.Sumathy, learned counsel for the petitioner/A-9 and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

4. The learned counsel for the petitioner submitted that the victim girls themselves did not speak about the involvement of this petitioner in the occurrence and one of the victim girls did not identify the petitioner. He further submitted that the learned trial Judge omitted to appreciate the contradictions in the evidence of witnesses. She undertakes to furnish sureties and prayed to suspend the sentence.

5. On receipt of the notice, the learned Additional Public Prosecutor appearing for the respondent/State has vehemently opposed to suspend the sentence by stating that the offence is heinous in nature. The two victim minor girls have been subjected to sexual exploitation by numerous persons. This accused have worked in tandem in order to achieve their object and to earn money.

6. On perusal of the records it is seen that the victims are children and they are below 18 years of age. The offences committed by the accused are punishable under POCSO Act. The minor children have been subjected to aggravated penetrated sexual assault by several men. The accused have worked in tandem in order to enrich themselves by subjecting the victims to sexual exploitation. The victim children have been kept in confinement for nearly 7 months in brothel houses. The offences are not only serious but also heinous in nature. Admitting the appeal will not entitle the accused to get the suspension of sentence automatically.



7. In this connection, it is worthwhile to refer to a judgment rendered by the Hon'ble Supreme Court of India in Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) [(2008) 5 SCC 230], the Supreme Court 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." (emphasis supplied)

8. In view of the reasons stated above, we are not convinced to suspend the sentence and to release the petitioner/A-9 on bail. However we would like to impress on the learned counsel for the appellant that he can request for the early hearing of the appeal and for which this Court would try to accommodate.

In the result this Criminal Miscellaneous Petition in Cr1.MP.No.10221 of 2021 is dismissed.

-sd/-
29/10/2021

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 MAHILA COURT,
CUDDALORE.

2 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, CUDDALORE,
NORTH P.S., CUDDALORE.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

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

C.C. to M/S.S.R.SUMATHY Advocate on payment of necessary charges

Order

in
CRL MP.10221/2021
in
CRL.A.NO.283/2019

Date :29/10/2021

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