



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Fifth day of March Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice A.A. NAKKIRAN

CRIMINAL MISCELLANEOUS PETITION No.1958 of 2022

IN CRL.A.No.149 of 2022

T.UDHAYAKUMAR

[PETITIONER / APPELLANT / SOLE ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
ALANDUARI POLICE STATION,
COIMBATORE DISTRICT.
CRIME NO.220 OF 2013.

[RESPONDENT / COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed by Learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore dated 23.09.2021 in Sessions Case No.112 of 2018 and enlarge the petitioner on Bail.

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.N.CHINNARAJ, Advocate for the Petitioner and of M/S.R.MUNIYAPPARAJ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(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 23.09.2021 passed in S.C.No.112 of 2018 on the file of the Sessions Court, Magalir Neethimandram, (Mahila Court), Coimbatore and to enlarge the petitioner on bail, pending disposal of the above appeal.



2. It is the case of the prosecution that the deceased "X" (name not disclosed for the sake of anonymity) and her mother were pavement dwellers and were living under a tamarind tree in the village. The petitioner, who got estranged from his wife, tried to establish a relationship with "X", but, "X" refused his overtures. On 18.09.2013, around 11.00 p.m., when "X", who was sleeping under the tamarind tree, went to the public toilet to ease herself, the appellant is said to have followed her and had forcibly raped her and also murdered her.

3. On these allegations, the petitioner was prosecuted in S.C.No.112 of 2018 before the Sessions Court, Magalir Neethimandram, (Mahila Court), Coimbatore.

4. The appellant was released on bail by the trial Court, but, since he absconded, Non-Bailable Warrant (NBW) was issued against him and was secured thereafter.

5. After a full-fledged trial, the petitioner has been convicted and sentenced as follows on 23.12.2021:

S.No.	Provision under which convicted	Sentence
1	Section 376 IPC	Ten years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment.
2	Section 302 IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

6. Challenging the aforesaid conviction and sentences, the petitioner has filed CrI.A.No.149 of 2022 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

7. Heard Mr.N.Chinnaraj, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

8. The learned counsel for the petitioner took this Court through the cross-examination of Dr.Jeyasingh (PW11), who performed autopsy on the body of "X", and submitted that Dr.Jeyasingh (PW11) has stated that spermatozoa was not found in the vaginal swabs of "X", and so, possibility of rape was not there.

9. We are afraid that this argument cannot be countenanced, because, the presence of spermatozoa may corroborate the evidence of the prosecution, but, its absence will not contradict the offence of rape.



10. 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 Punjab² 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 taking into consideration the fact that earlier the petitioner had absconded, re-arrested and was made to face the trial and coupled with the gravity of the offence, 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/-
25/03/2022

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.

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



TO

1 THE SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM, (MAHILA COURT),
COIMBATORE

2 THE INSPECTOR OF POLICE,
ALANDUARI POLICE STATION,
COIMBATORE DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.N.CHINNARAJ Advocate on payment of necessary charges

Order
in
CRL MP.1958/2022
in
CRL A.149/2022

Date :25/03/2022

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JPA 30/03/2022