



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Fourth 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.3794 of 2022

IN CRL.A.NO.148 of 2021

AYYAKANNU

[APPELLANT/1st ACCUSED]

Vs

THE STATE REP BY ITS
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VRIDHACHALAM.
(CRIME NO.33 OF 2018)

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.148 of 2021 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the order passed against the petitioner in Spl.S.C.No.54 of 2019 on 29.12.2020 by the Learned Session Judge, Special Court for Exclusive Trial Cases under POCSO Act, Cuddalore and enlarge the petitioner on bail pending disposal of the Criminal Appeal No.148 of 2021 and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.148 of 2021 on the file of the High Court and upon hearing the arguments of M/S.S.SARAVANA KUMAR, Advocate for the Appellant and of MR.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 29.12.2020 passed in Spl.S.C.No.54 of 2019 on the file of the Sessions Court, Special Court for Exclusive Trial of Cases under the POCSO Act, Cuddalore and to enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who was the first accused in Spl.S.C.No.54 of 2019 before the Sessions Court, Special Court for Exclusive Trial of Cases under the POCSO Act, Cuddalore, was convicted and sentenced as follows on 29.12.2020:

S.No.	Provision under which convicted	Sentence
1	Section 451 IPC	Ten years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo three months simple imprisonment.
2	Section 366 IPC	Ten years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo three months simple imprisonment.
3	Section 5(1) r/w 6 of the POCSO Act r/w 376(3) IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

3. Challenging the aforesaid conviction and sentences, the petitioner (A1) has filed CrI.A.No.148 of 2021 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Saravana Kumar, learned counsel for the petitioner (A1) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the victim girl "X" (PW2) (name not disclosed for the sake of anonymity), who was studying in XI standard, was enticed by the appellant on the ground that he is intensely in love with her and the appellant is said to have had sexual intercourse with her not only in her house, but also in the house of one Sinthamani.



6. The learned counsel for the petitioner (A1) submitted that the petitioner (A1) had consensual sex with "X" (PW2), inasmuch as, "X" (PW2), in her evidence, has stated that she voluntarily went with the appellant, since the appellant stated that he was in love with her and he would marry her.

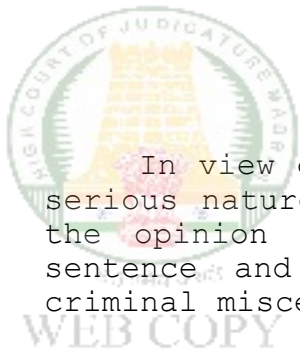
7. However, it is seen that the appellant was already a married man and he got separated from his wife. While that being so, the appellant ought not to have enticed "X" (PW2), a standard girl, with such false promises and used her innocence to his advantage.

8. 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."

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



In view of the above reasoning and taking into consideration the serious nature of allegations against the petitioner (A1), we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A1) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

24/03/2022

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.

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER THE POCSO ACT, CUDDALORE.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VRIDHACHALAM, CUDDALORE DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.S.SARAVANA KUMAR Advocate on payment of necessary charges

Order
in
CRL MP.3794/2022
in
CRL.A.148/2021
Date :24/03/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

CSK 29/03/2022