



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Monday, the Eleventh day of April 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.3560 of 2022

IN CRL.A.No.304 OF 2022

M. STALIN

[PETITIONER/APPELLANT]

Vs

STATE REP BY
INSPECTOR OF POLICE,
ANTI TRAFFICKING CELL,
CRIME BRANCH CID,
GUINDY, CHENNAI.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.304 OF 2022 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.37 of 2015 dated 26.07.2021 on the file of the Learned Sessions judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner/appellant/accused on Bail.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.304 OF 2022 on the file of the High Court and upon hearing the arguments of M/S. GANESHA MOORTHY B., Advocate for the petitioner and of M/S R.MUNIYAPPARAJ, GOVT.ADVOCATE (CRL.SIDE) 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 26.07.2021 passed in S.C.No.37 of 2015 on the file of the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Chennai and to enlarge the petitioner on bail, pending disposal of the above appeal.



2. The petitioner, who was the fourth accused in S.C.No.37 of 2015 before the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Chennai, was convicted and sentenced as follows on 26.07.2021:

Provision under which convicted	Sentence
Section 6 @ 4 of the POCSO ACT	Seven years imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

3.Challenging the aforesaid conviction and sentence, the petitioner (A4) has filed Crl.A.No.304 of 2022 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.Ganesha Moorthy B., learned counsel for the petitioner (A4) 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 divulged for the sake of anonymity), who was fourteen years at the time of occurrence, was introduced into fresh trade by Krishnaveni (A1) and Elangovan (A2) and the petitioner herein (A4) used to repeatedly have sex with "X" (PW2).

6. The learned counsel for the petitioner (A4) submitted that the petitioner (A4) was only the customer and not the person, who had actually running the brothel. He also took us through the findings of the trial Court in this regard.

7. Per contra, the learned Additional Public Prosecutor submitted that the evidence of "X" (PW2) is very clear, in that, she has stated that the petitioner (A4) used to frequently have sex with her as he was known to Krishnaveni (A1) and Elangovan (A2).

8. 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 v. 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 :



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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 serious nature of allegations against the petitioner (A4), we are of the view that this is not a fit case to grant suspension of sentence and bail to the petitioner (A4) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

11/04/2022

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), CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON (CONVICTED CELL),
PUZHAL, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



4 INSPECTOR OF POLICE,
ANTI TRAFFICKING CELL,
CRIME BRANCH CID, GUINDY,
CHENNAI.

C.C. to M/S. GANESHA MOORTHY B. Advocate on payment of
necessary charges

Order

in
CRL MP.3560/2022

IN CRL.A.No.304 OF 2022

Date :11/04/2022

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RVR 18/04/2022