



Crl.M.P.No.8369 of 2022
in Crl.A.No.631 of 2022

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P.N.PRAKASH, J.
and
RMT.TEEKAA RAMAN, J.

ORDER
(Made by *P.N.PRAKASH, J.*)

This criminal miscellaneous petition has been filed seeking a direction to suspend the sentence imposed on the petitioner by judgment and order dated 09.10.2020 passed in S.C.No.143 of 2016 on the file of the Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Krishnagiri District and to enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner faced a prosecution in S.C.No.143 of 2016 on the file the Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Krishnagiri District, in which, by judgment and order dated 09.10.2020, he was convicted and sentenced as follows:



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<i>Provision under which convicted</i>	<i>Sentence</i>
Section 341 IPC	One month rigorous imprisonment.
Section 354 IPC	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment.
Section 376 (1) IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the aforesaid conviction and sentences, the petitioner has filed Crl.A.No.631 of 2022 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

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



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5. It is the case of the prosecution that the victim girl “X” (PW3) (name not disclosed for the sake of anonymity) is not only a deaf and dumb but also mentally retarded, in which, Mental Retardation (MR) 55 % has been determined by the doctors, who examined her. The appellant, who is 27 years old, is said to have taken her to a nearby field and after disrobing her, has had sexual intercourse with her. On these charges, the petitioner was tried in S.C.No.143 of 2016 and has been convicted and sentenced as stated above.

6. The present appeal has been filed with a delay of 39 days, which, this Court, by order dated 22.06.2022 in CrI.M.P.No.7743 of 2022 in CrI.A.No.SR24662 of 2022, condoned the same.

7. The learned counsel for the petitioner took us through the evidence of Dr.Anbarasu (PW13) and Dr.Deepalakshmi (PW16) and submitted that “X” (PW3) was not completely deaf and dumb and the doctors have stated that she was able to given answers to the questions asked by them.



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8. When we perused the evidence of Dr.Anbarasu (PW13) and Dr.Deepalakshmi (PW16), we find that they have also stated that they interacted with “X” (PW3) at the time of her examination with the help of a trained interpreter. Even the complaint (Ex.P1) in this case has been registered with the assistance of Kaladevi (PW4) from deaf and dumb school.

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

¹ (2008) 5 SCC 230

² 1977 SCC (Cri) 559



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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 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. The Registry is directed to prepare typed set of papers and post the main appeal for final hearing in the first week of November 2022.

(P.N.P.,J.) (T.K.R.,J.)
20.09.2022

nsd



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nsd

To

- 1.The Sessions Judge, Magalir Needhi Mandram,
(Fast Track Track Mahila Court), Krishnagiri District.
- 2.The Inspector of Police,
All Women Police Station,
Denkanikottai, Krishnagiri District.
- 3.The Public Prosecutor,
Madras High Court, Chennai – 600 104.

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20.09.2022