



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

ORDER

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

The petitioner, who was an accused in Spl.S.C.No.17 of 2018 before the Sessions Court, Magalir Neethimandram, (Fast Track Mahila Court), Tiruppur, was convicted and sentenced as follows on 31.12.2019:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 366 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
Section 5(l) r/w 6 of the POCSO Act	Rigorous imprisonment for life and fine of Rs.5,000/-, in default to undergo two years rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

2. Challenging the aforesaid conviction and sentences, the petitioner has filed Crl.A.No.1090 of 2022 with the instant criminal miscellaneous petition seeking suspension of sentence and bail, pending



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

WEB COPY

disposal of the appeal.

3. Heard Mr.Deepanuday, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

4. The learned counsel for the petitioner submitted that the charges themselves have been framed inconsistently, in that, it is stated in the charges that the victim girl “X” (PW2) (name not disclosed for the sake of anonymity) was abused by the petitioner beneath a tamarind tree, whereas, the rough sketch does not show the said place. He further submitted that the object of trial is to prove the charge against the accused and therefore, the conviction cannot be beyond the charge. In support of this contention, the learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in *Main Pal vs. State of Haryana*¹. It is his further submission that the trial Court has mainly relied upon the evidence of “X” (PW2), which has not been corroborated either by medical evidence or through any other independent evidence. He further submitted that the

¹ (2010) 10 SCC 130



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

testimony of “X” (PW2) is inconsistent with her previous statements under Section 164 Cr.P.C. It is his further submission that the evidence of “X” (PW2) is not of a sterling quality for convicting the petitioner.

5. The learned Additional Public Prosecutor refuted the aforesaid submissions made by the learned counsel for the petitioner.

6. This Court gave its anxious consideration to the rival submissions.

7. It is the case of the prosecution that “X” (PW2) was sixteen years old and was studying in XI standard; the petitioner was her neighbour; the petitioner was already a married man and since his wife was pregnant, she was away from home; using that circumstance, the petitioner is said to have enticed “X” (PW2) saying that he would marry her and maintain her well; believing his representation, “X” (PW2) left the school on 23.11.2017 with the petitioner and thereafter, both of them went around various places; on 17.12.2017, “X” (PW2) was abandoned by the petitioner.



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

WEB COPY

8. It is seen that immediately after “X” (PW2) went missing, on the complaint given by her father, a case for “girl-missing’ was registered on 25.11.2017 *i.e.* within two days from date of missing. The judgment relied on by the learned counsel for the petitioner *viz.* **Main Pal** (*supra*) can be pressed into service only during the final disposal of the appeal and hence, the same cannot be of much avail, while deciding a petition for suspension of sentence and bail.

9. As for now, we perused the testimony of “X” (PW2) and we do not find it so unbelievable as to reject it outright for the purpose of granting suspension of sentence and bail to the petitioner. That apart, there is a presumption under Section 29 of the POCSO Act, which has to be discharged by the accused during trial.

10. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**²,

² (2008) 5 SCC 230



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

has considered **Kashmira Singh v. State of Punjab**³ 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.”

11. In view of the above reasoning and on a conspectus of the facts obtaining in this case, we of the view that this is not a fit case to grant suspension of sentence and bail to the petitioner. The factual and legal issues raised by the learned counsel for the petitioner could be dealt with only during the final disposal of the appeal.

³ 1977 SCC (Cri) 559



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

WEB COPY

12. Accordingly, this criminal miscellaneous petition stands dismissed and it is made clear that whatever is stated above is only for the limited purpose of deciding this criminal miscellaneous petition.

Since the petitioner was convicted in the year 2019, but, had filed the appeal only in the year 2022, this case deserves to be taken up for final hearing. Hence, the Registry is directed to prepare the typed set of papers immediately and post the main appeal for final hearing in the first week of December 2022.

(P.N.P.,J.) (T.K.R.,J.)
20.10.2022

nsd



WEB COPY



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

To

- 1.The Sessions Judge,
Magalir Neethimandram,
(Fast Track Mahila Court), Tiruppur.
- 2.The Superintendent of Prison,
Central Prison,
Coimbatore.
- 3.The Inspector of Police,
All Women Police Station,
North, Tiruppur.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



WEB COPY



Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

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

nsd

Crl.M.P.No.14613 of 2022
in Crl.A.No.1090 of 2022

20.10.2022