



WEB COPY



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

Crl.M.P.No.2484 of 2023
in
Crl.A.No.1269 of 2022

M.SUNDAR.,J.
AND
R.SAKTHIVEL.J.,

(order of the Court was made by M.SUNDAR.J.,)

Captioned 'Criminal Miscellaneous Petition' ['Crl. M.P' for the sake of brevity] has been filed under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] with a suspension of sentence (bail) plea qua judgment of conviction and sentence dated 27.10.2022 vide Special S.C.No.58 of 2019 on the file of 'Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur' which shall hereinafter be referred to as 'trial Court' for the sake of convenience and clarity.

2. In the trial Court there were two accused who are spouses. To be noted, both were convicted but A1 husband of the petitioner in captioned Crl.M.P died [very recently (05.06.2023)] while serving the sentence. A1



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

and A2 were aged 60 and 54 years respectively on the date of conviction by trial Court.

3. As regards the prosecution case which was believed by the trial Court, the victim is a relative's child, the occurrence was on 27.06.2019 and the charge common to A1 and A2 is Section 201 read with Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity]. As against A2 (petitioner before us), further charges were under Section 366 read with 109 of IPC and Section 5(m) read with Section 6 read with Section 17 of 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of brevity]. The prosecution version believed by the trial Court is that when the victim's mother had taken her son to tuition class two streets away leaving behind the victim at home without locking the main door, A1 trespassed into the house of the deceased victim, brought her out, first made her sit in a parked motor cycle, then took the deceased victim into his house and committed penetrative sexual assault in the bedroom situate on the western side of his house though the victim was crying. Fearing that the victim may raise her voice, it is alleged that first accused



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

used a jute rope and strangled the victim and the victim died due to suffocation. It is the case of the prosecution that A2, who was at home at the time of commission of this offence, did not prevent A1 and had thus abetted the crime. It is also the further prosecution case that A2 along with A1 with intention of concealing evidence of crime washed the body of the deceased victim in a toilet. The specific overtact as against A2 is that she carried the victim from the bathroom of their house to the bathroom of PW1 (to be noted, PW1 is mother of the victim) crossing over pump set across the way and used a wet gauze to wipe blood from the ridge of the well wall. Considering that the legal drill on hand is one of testing a suspension of sentence plea under Section 389(1) Cr.P.C, we refrain ourselves from dilating further on facts.

4. As regards the judgment of the trial Court, it is seen that the conviction as regards A2 is based largely on last seen theory but there is no eye witness. To be noted, the conviction is based on circumstantial evidence.

5. As regards the sentence, the verdict of the trial Court is as follows:

Sl.No.	Charge	Sentence
1	Section 366 read with Section	10 Years Rigorous Imprisonment



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

	109 of IPC	& Rs.1000/- fine and 6 months simple imprisonment if there is default in paying the fine.
2	Section 302 read with Section 109 IPC	Life imprisonment and Rs.10,000/- fine with a default clause of 6 months simple imprisonment if fine is not paid
3	Section 5(m) of POCSO Act punishable / read with Section 17 of POCSO Act	Life imprisonment and Rs.10,000/- fine with six months Simple Imprisonment if there is default in payment of fine.

The sentences are to run concurrently under Section 427 Cr.P.C.

6. Reverting to the case on hand, we notice that A2's husband (A1) passed away very recently (A1 died while serving the sentence). A2 has been incarcerated from 28.06.2019 for about six months and thereafter, she has remained incarcerated on and from 28.10.2022.

7. We also notice that there is no complaint of any prison offence against A2 and the scenario is, conduct of A2 in prison i.e., in incarceration, has been blemishless.



WEB COPY



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

8. Learned Prosecutor drew our attention to the counter affidavit which was filed in the light of first proviso to Section 389 (1) of Cr.P.C i.e., for serving the purpose of showing cause against release and submitted that the gravity of offence militates against suspension / release.

9. We applied the test for suspension of sentence plea and we have also considered the peculiar facts and circumstances of this case and noticed that A2 has lost her spouse very recently while both were serving the sentence. In any event, as regards the main appeal we have already noticed that *prima facie* the possibility of acquittal is palpable i.e., tangible and this *prima facie* view is without resorting to re-appreciation of evidence for reasons about which there is allusion and delineation supra. Therefore, the argument of learned Prosecutor can be reserved for the main appeal is our view.

10. Considering the peculiar facts and circumstances of the case and taking into account the legal principle laid down that the test in a suspension of sentence legal drill is whether there is fair chance of acquittal and as to



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

whether the same is palpable without resorting to re-appreciation of evidence, we are of the view that in the case on hand, there is a fair chance of acquittal as the last seen theory which is the bedrock of conviction and sentence is based only on circumstantial evidence with no eye witness. The undisputed obtaining position that the spouse of A2 i.e., A1 died very recently on 05.06.2023 while serving sentence has also weighed in favour of acceding to the prayer for suspension of sentence and bail.

11. In the light of the discussion and dispositive reasoning thus far the following order is made:

- (a) The sentence qua judgment and conviction dated 27.10.2022 in Special S.C.No.58 of 2019 on the file of the trial Court i.e., learned Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur is suspended and the bail is subject to conditions which are set out in other sub-paragraphs infra;
- (b) The petitioner shall deposit the fine amounts before the trial Court if not already deposited;
- (c) The petitioner shall execute a bond of Rs.25,000/-



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

[Rupees Twenty Five Thousand only] with two sureties of whom one should be a blood relative (each for a like sum) to the satisfaction of the trial Court i.e., Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur;

(d) The petitioner shall stay in Rajapalayam, Virudhunagar District and petitioner shall not move out of Virudhunagar District without the leave of the Sessions Judge, Special Court POCSO Act Case, Srivilliputhur; and

(e) The petitioner shall report before the learned Sessions Judge, Special Court POCSO Act Case, Srivilliputhur on the first working day of every week at 10.30am pending disposal of the appeal.

This Crl.MP is disposed of with the aforementioned directives.

[M.S.,J.]

[R.S.V.,J]

gpa

15.06.2023

P.S: Registry to forthwith communicate this order to Jail Authorities in Central Prison, Puzhal



WEB COPY



Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

M.SUNDAR.,J.
AND
R.SAKTHIVEL.J.,

Crl.M.P.No.2484 of 2023
in Crl.A.No.1269 of 2022

15.06.2023