



CRL.O.P.No.10926 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE **SUNDER MOHAN**

CRL.O.P.No.10926 of 2023

and

Crl.M.P.No.6881 of 2023

1. Dayalan
2. Srinivasalu
3. Krishnamoorthy

... Petitioners

Vs.

State by,
Inspector of Police,
Central Crime Branch,
St.Thomas Mount,
Chennai.

... Respondent

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C., praying to modify the condition imposed on the petitioner that on depositing a sum of Rs.25,00,000/- to the credit of C.C.No.102 of 2019, before the learned Judicial Magistrate No.1, Poonamallee within one month from the date of this order passed by the learned Principal District and Sessions Judge at Tiruvallur in Crl.M.P.No.1433 of 2023 in Crl.A.No.86 of 2023, dated 18.04.2023.

For Petitioner : Mr.K.R.Ramesh Kumar

For Respondent : Mr.S.Balaji
Government Advocate (Crl.Side)



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ORDER

This petition has been filed to modify the condition imposed by the Appellate Court in CrI.M.P.No.1433 of 2023 in CrI.A.No.86 of 2023, dated 18.04.2023, while suspending the sentence imposed on the petitioners in the trial in C.C.No.102 of 2019 on the file of the Judicial Magistrate No.1, Poonamallee.

2. It is seen that the petitioners were found guilty of the offence under Section 120-B IPC and sentenced to undergo three months of simple imprisonment each and also found guilty for the offence under Section 406 r/w 34 IPC and sentenced to undergo one year of rigorous imprisonment each and found guilty for the offence under Section 420 r/w 34 IPC and sentenced to undergo two years rigorous imprisonment each and to pay a compensation of Rs.1,44,00,000/- jointly or severally to the defacto complainant within one month from the date of the said Judgment, in default, to undergo further simple imprisonment for five months and acquitted for the offences under Section 294(b) and 506(i) IPC.

3. The petitioners had preferred an appeal before the learned Principal District and Sessions Judge, Tiruvallur in CrI.A.No.86 of 2023.



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While suspending the sentence in Crl.M.P.No.1433 of 2023 in Crl.A.No.86 of 2023, the learned Principal District and Sessions Judge directed the petitioner to deposit a sum of Rs.25 lakhs to the credit of C.C.No.102 of 2019, before the learned III Additional District and Sessions Judge, Poonamallee as a condition for suspension of sentence.

4. The learned counsel for the petitioners submits that the very order directing the petitioners to pay any compensation is without any basis and contrary to the dictum laid down by the Hon'ble Supreme Court in ***Dilip S.Dahanukar vs. Kotak Mahindra Co. Ltd., and another*** reported in ***(2007) 6 SCC 528*** and the Delhi High Court in ***Karan Vs. State*** reported in ***277 (2021) DLT 195***. The learned counsel further submits that in any event, there cannot be any onerous condition for suspending the sentence and that appeal being a statutory remedy cannot be curtailed by such onerous conditions.

5. The learned Government Advocate (Crl.Side), however submits that since there was a direction to pay compensation, the Appellate Court was empowered to impose such a condition, and there is no illegality in the



said order; that the right of Appeal has not been curtailed and this is an order passed in the petition to suspend the sentence.

6. It is settled law that there must be a basis for fixing the quantum of compensation under Section 357 Cr.P.C. The Delhi High Court, in the Judgment cited above, had laid down detailed guidelines as to when and how the direction to pay compensation has to be made. The Court has to consider the financial capacity of the accused and the nature of the loss caused to the victim. The Court, while assessing the financial capacity of the accused has to take into consideration his occupation and income. To ascertain the financial capacity, the accused has to be directed to file an affidavit of assets and liabilities. However, in the instant case, no such exercise has been done.

7. Be that as it may, the Appellate Court, while granting suspension of sentence cannot impose a onerous condition to suspend the sentence of imprisonment. The Hon'ble Apex Court in ***Guddan @ Roop Narayan vs. State of Rajasthan in Crl.A.No.120 of 2023, dated 03.01.2023***, has held that such onerous conditions cannot be imposed. The relevant paragraphs



are extracted hereunder for better understanding:

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"5. The Appellant then preferred an Appeal before the High Court, and during the pendency of the Appeal preferred an Application for Suspension of Sentence.

6. The High Court, vide impugned order dated 20.09.2022 suspended the sentence of the Appellant, however imposed strict conditions of deposit of fine amount of Rs. 1,00,000/- along with a surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each.

7. These conditions imposed by the High Court for the grant of suspension of sentence are being challenged in the present Appeal.

...

13. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs.1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each.

14. We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof enough to show that he is not to be languishing in jail during the pendency of the case.



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8. In view of the above, this Court is of the view that the order directing the petitioner to deposit a sum of Rs.25 lakhs, to the credit of C.C.No.102 of 2019, as a condition to suspend the sentence is liable to be set aside.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition stands closed. No costs.

10.05.2023

Internet : Yes/No
Index : Yes/No
Speaking/Non speaking order
ssi/kmi

To

1. The Principal District and Sessions Judge,
Tiruvallur.
2. The Inspector of Police,
Central Crime Branch,
St.Thomas Mount, Chennai.
- 3.The Public Prosecutor,
High Court of Madras, Chennai.



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SUNDER MOHAN,J.,

ssi

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