



Crl.M.P(MD)No.9677 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Ninth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.SUNDAR
and
The Hon`ble Mr.Justice R. SAKTHIVEL

Crl.M.P(MD)No.9677 of 2023
in
Crl.A(MD)No.112 of 2023

RADHAKRISHNAN

... PETITIONER/ APPELLANT/
ACCUSED NO.7

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
B3 THEPPAKULAM POLICE STATION(LAW AND ORDER),
MADURAI (CRIME NO.1134 OF 2017)

... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence passed imposed on the petitioner/Appellant/Accused No.7 passed in S.C.No.267 of 2019 dated 21.12.2022 by the learned Sessions Judge, Mahalir Neethimandram, Madurai and enlarge the petitioner on bail pending disposasl of the criminal appeal and thus render Justice.

PRAYER IN Crl.A(MD)No.112 of 2023:

To call for the records and set aside the conviction and sentence passed in S.C.No.267 of 2019 dated 21.12.2022 by the learned Sessions Judge, Mahalir Neethimandram, Madurai.



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Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.N.ANANTHAPADMANABAN, Senior Counsel for M/S.BALA KARTHICK.S, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

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

Captioned 'Criminal Miscellaneous Petition' ('CrIMP' for the sake of brevity) has been filed with a prayer for suspension of sentence under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' (hereinafter 'CrPC' for the sake of brevity and clarity).

2. Short facts are that the occurrence which led to conviction of petitioner / appellant was on 16.11.2017; that on the fateful day, two children of the defacto complainant [P.W.1] were kidnapped by interception of the car in which they were travelling by A1, A3 and A10; that the father of A1 was employed as an accountant in the Dhall/Flour Mill of the defacto complaint [P.W.1]; that on superannuation, he was not paid lump sum compensation; that A1 was agitated owing to this; that the kidnapping of children of defacto complainant was for the purpose of demanding a ransom; that this is the prosecution theory, which was believed by the trial Court leading to conviction inter alia of A7; that the conviction is vide judgment and



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sentence dated 21.12.2022 in S.C.No.267 of 2019 on the file of learned Sessions Judge, Mahalir Neethimandram, Madurai; that the sentence is on two counts viz., under Section 120(B) r/w 364-A IPC and standalone Section 364-A IPC; that the sentence is life imprisonment for each count with a Rs.5,000/- fine with one year simple imprisonment as default clause; that the captioned main Criminal Appeal has been filed by the petitioner/ A7 in the trial Court assailing the conviction and sentence; that A7 is very ill having been diagnosed with cancer of the large intestine; that the malignancy is now in stage III warranting treatment in Cancer Institute of Adyar is the primary ground [besides other grounds], on which suspension of sentence under Section 389(1) CrPC has been sought in the captioned CrlMP.

3. In the hearing today, Mr.N.Ananthapadmanaban, learned Senior Counsel instructed by Mr.S.Bala Karthick and Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor, who had filed a counter in the light of proviso to Section 389(1) of CrPC, who were before us made submissions.

4. After hearing both sides, this Court is convinced that this is a fit case for acceding to the prayer for suspension of sentence and the reasons are i.e., dispositive reasoning is as follows:



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(i) The argument of learned Senior Counsel that the only overt act attributed to A7 is that A5 took cash [ransom] from the specified place and handed over the same to A7 for safe custody but P.W.8, who was the lone witness examined to establish this also turned turtle is a point that weighs with us at this stage and to be noted this weighs with us without resorting to re-appreciation of evidence which we reserve for the legal drill in the main appeal;

(ii) The defence before the trial Court was that A7 was an Advocate Clerk working with an Advocate who was representing A1 in his matrimonial dispute with A8 and he had gone over to the police station to help A1 and A7 was framed. Considering the overt act and the nature of the conviction this also weighs with us as an arguable point which needs to be gone into in the main appeal. Suffice to state that there is an arguable point in the main appeal;

(iii) The medical condition of the petitioner weighs heavily with us, as already alluded to supra, he has been diagnosed with cancer of large intestine



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[adenocarcinoma of transverse colon] and the present condition as per the generic report (to whomsoever it may concern) from Cancer Institute, Adayar, dated 04.05.2023 shows that it is stage III and he is on clinical trial;

(iv) The principle in *Kashmira Singh Vs. State of Punjab* [(1977) 4 SCC 291] which is to the effect that if the measure of time for having the appeal heard out is substantial suspension of sentence can be acceded to. In the case on hand, considering the medical condition, we are of the view that Nature should not overtake the appeal trajectory and therefore, this point also enures to the benefit of acceding to the prayer though the measure of time is not much;

(v) Learned State Additional Public Prosecutor submitted that as regards the overt act and P.W.8 [who alone spoke about A7] turning turtle, this needs to be gone into in the appeal, as we have already alluded to supra we have preserved that for the legal drill in the main appeal. It will suffice to say that we have applied *Omprakash Sahni* principle i.e., the ratio in *Omprakash Sahni Vs. Jai Shankar Chaudhary* [2023 SCC OnLine 551] to say that there are fair chances of acquittal and there is something palpable on the



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face of the record but with a caveat that this is only a prima facie satisfaction which has been arrived at without resorting to re-appreciation of evidence. Though the evidence of P.W.8 was adverted to, we have only gone by the overt act and the undisputed position that P.W.8 turned hostile ie., turned turtle;

(vi) The petitioner / appellant remains incarcerated from 21.12.2022 [date of conviction] and another Hon'ble Coordinate Division Bench has granted interim bail on the same medical condition ground vide Crl.M.P. [MD]No.7413 of 2023 in and by an order dated 11.05.2023. This interim bail period is over and the treatment was availed during this period, more importantly, this period passed without any untoward incident and the petitioner / appellant surrendered after the period of interim bail elapsed.

5. In the light of narrative discussion and dispositive reasoning set out supra, the following order is made:

(i) The sentence of the trial Court i.e., sentence dated 21.12.2022 in

S.C.No.267 of 2019 on the file of learned Sessions Judge, Mahalir



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Neethimandram, Madurai is suspended pending appeal ie., till disposal of the appeal:

(ii) The petitioner shall deposit the fine amount before the trial Court, if not already deposited;

(iii) The petitioner shall execute a bond and furnish two sureties each for a likesum of Rs.10,000/- [Rupees Ten Thousand Only] to the satisfaction of the trial Court ie., Sessions Court, Mahalir Neethimandram, Madurai. We make it clear that one of the sureties shall be a relative and we are informed that it shall be wife of petitioner / appellant;

(iv) the petitioner shall stay within Madras ie., Madras City as per police jurisdiction of Commissioner of Police, Greater Chennai;

(v) the petitioner shall sign in J4, Kotturpuram Police Station, Chennai every Monday and Friday in the forenoon at half-past ten for the present i.e., until further orders.



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6. Captioned CrlMP is disposed of in the aforesaid manner acceding to the suspension of sentence prayer albeit with the aforementioned conditions/directives.

sd/-
09/11/2023

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10/11/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSM

TO

- 1.THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.
- 2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3.THE INSPECTOR OF POLICE
B3 THEPPAKULAM POLICE STATION(LAW AND ORDER),
MADURAI
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE INSPECTOR OF POLICE,
J4, KOTTURPURAM POLICE STATION,
CHENNAI



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+1 CC to M/s.S.BALAKARTHICK, Advocate (SR-16200[I] dated 10/11/2023)

ORDER
IN
Crl.M.P(MD)No.9677 of 2023
in
Crl.A(MD)No.112 of 2023
Date :09/11/2023

RK (10/11/2023) 9P / 7C

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