



*Crl.M.P.No.6026 of 2021
in Crl.R.C.No.349 of 2021*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.No.6026 of 2021
in
Crl.R.C.No.349 of 2021

Raji @ Sundarraaj
S/o.Govindaraj

... Petitioner/Accused

Vs.

State represented by
Deputy Superintendent of Police,
Crime Unit-II,
Crime Investigation Department,
Guindy, Chennai – 32.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence and enlarge the petitioner on bail pending disposal of the above Criminal Revision Case in C.C.No.9192 of 2010 (Old No.14564 of 2008) on the file of the XI Metropolitan Magistrate, Saidapet, Chennai as confirmed in Crl.A.No.250 of 2013 on the file of the learned IV Additional Sessions Judge, Chennai by judgement dated 04.08.2017.

For Petitioner : Mr.S.Hameed Ismail

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in C.C.No.9192 of 2010 by a judgment dated 30.10.2013 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai and confirmed by the learned IV Additional Sessions Judge, City Civil Court, Chennai made in C.A.No.250 of 2013 dated 04.08.2017 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner/A3 along with A1 and A2 in C.C.No.9192 of 2010 were convicted by the trial Court by judgment dated 30.10.2013 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- for offence under Section 120(b) IPC, to undergo three years (2 counts) rigorous imprisonment and to pay a fine of Rs.1000/- (each count) for offence under Section 420 IPC. The sentences are directed to run concurrently. Aggrieved over the same, the petitioner/A3 and other accused preferred an appeal in C.A.No.250 of 2013 before the learned IV Additional Sessions Judge, Chennai. The learned Sessions Judge, by judgment dated 04.08.2017, dismissed the appeal confirming the conviction and sentence



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passed by the trial Court, against which, the petitioner/A3 preferred a revision in Crl.R.C.No.349 of 2021 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW20 examined and marked Exs.P1 to P47. On the side of the defence, no witnesses examined and marked Ex.D1. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above, which was confirmed by the Appellate Court.

4.The contention of the learned counsel for petitioner is that the petitioner himself is a victim of circumstances. He lost his own kidney, which was confirmed by the report/Ex.P21. The case projected is that A1 and A2 sourced persons, who are willing to donate kidney as donor. They were taken to various hospitals including Apollo Hospital, Madurai, wherein PW1 and PW9 as donors, on impersonation, sold their kidneys for money and recipient of one kidney is son of PW8 and other kidney recipient is not known. PW8 confirms that an amount of Rs.1,65,000/- paid directly to A1. The case against the petitioner is that PW1 and PW9 is said to have paid Rs.1,000/-



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and Rs.5,000/- to the petitioner as brokerage. There is no other evidence against the petitioner. PW1, PW8 and PW9 admit that they had independent dealings with A1 and A2. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that on the complaint of Tmt.Mallika on accusations that by utilizing her poor status and the need for money, the accused 1 to 3, who are brokers in procuring persons for removal of the kidney for consideration with a promise of sumptuous amount to the victim falsely informing that by transplantation operation to provide kidney to other person under the pretext of donor done relation and by giving the Kidney she would be benefited by Rs.1.50 Lakhs, but actually gave her only Rs.30,000/-. With an ulterior motive of making easy money by cheating poor people, the accused had criminally conspired to induce poor people to sell their Kidney by promising them huge amount and to cheat them by paying very small amount after they had given their kidney and in pursuance of the criminal conspiracy they had obtained large amounts from the recipients and induced poor people to represent falsely before the Authorization Committee with the



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support of the bogus ration card and false affidavit they were supplying and after getting approval from the Committee to get them operated upon and part with their Kidney in favour of the recipient. After the operation is over the accused had given only very less amount and thereby cheated the poor people.

5.1.He further submitted that the facts of committing a Criminal conspiracy to cheat by falsely promising and inducing the poor complainants Mari @ Mariappan @ Marimuthu and Mallika to part with a Kidney each in lieu of Rs.60,000 and Rs. 1,50,000 respectively and in pursuance of the conspiracy induced the complainants to part with their kidney and consequently cheated them by paying only Rs.30,000/- each as against Rs.60,000 and Rs.1,50,000/-falsely promised by them, by the accused has been held proved in investigation. After completion of investigation final report was filed against the accused A1/Kadhar Sheriff, A2/Seeni Mohamed and petitioner/accused A3/Raji @ Sundarraaj for commission of offence under section 120(b) r/w. 420 & 420 IPC before the learned II Metropolitan Magistrate, Egmore, Chennai in CC.No.9192/2010 (Old CC No.14561/2008). After completion of trial, accused A1 to A3 were convicted under section 120(b) of IPC for one year rigorous imprisonment and to pay



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fine of Rs 500/- in default one month simple imprisonment and convicted for the offence under section 420 IPC (2 counts) a rigorous imprisonment for 3 years for each count to the total of 6 years and fine Rs 1000/- for each count in default 2 months simple imprisonment and the period already in detention by the accused 1 to 3 were set-off under section 420 of IPC and the accused 1 to 3 were directed to undergo the said imprisonment concurrently by the Judgement of the learned XI Metropolitan Magistrate, Saidapet, Chennai, dated 30.10.2013.

5.2.He further submitted that the accused A1 to A3 had preferred a Criminal Appeal No.250/2020 and same was confirmed by the learned IV Additional Sessions Judge, Chennai on 04.08.2017. Subsequently, Non Bailable Warrant was issued against the accused A1 to A3 by the learned XI Metropolitan Magistrate, Saidapet, Chennai on 02.11.2019. During that time, it is learnt that the A1 Kadhar Sherif and A2 Seen Mohmed were expired on 16. 11 2018 and 11.01.2019 respectively. Further, the petitioner / accused A3 Raji @ Sundarraaj was found to be absconding and the petitioner / accused had filed a Revision Petition before this Court against the sentence confirmed on him by the Hon'ble IV Additional Session Judge, Chennai. While so, Warrant under section 255(1) and 255 (2), 248 (1) & (2) and 235 of the



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Code of Criminal Procedure issued by the learned XI Metropolitan Magistrate, Saidapet on 03.11.2023 against the petitioner / accused A3 Raji @ Sundarraaj, that was executed on 11.03.2024 @ 12.15 hrs. at Kasimedu and the petitioner / accused Raji @ Sundarraaj was remanded in to judicial custody, confined in Central Prison-I, Puzhal, Chennai.

5.3.He further submitted that after a thorough, full scrutiny and meticulous consideration of evidence, the lower Court had passed a well oriented and reasoned judgement / confirmation order and the lower Court had not erred in convicting the petitioner / accused A3 Raji @ Sundarraaj and other two accused A1 & A2. Thus, the same calls for no interference from this Court. It is submitted that the accused 1 to 3 had induced the witnesses PW1 Mallika and PW9 Mari and promised them that they would be given a sum of Rs.1,50,000/- to PW1 and a sum of Rs. 60,000/- to PW9 in lieu of their kidneys and accordingly during the beginning of December, 2004 the petitioner / accused A3 Raji @ Sundarraaj took them to the accused A2 Seeni Mohamed, who is in Trichy and introduced the accused A1 Kadhar Sheriff in Madurai and their kidneys were removed on 20.12.2004 and on 03.12.2004 transplanted to two persons respectively under the different name and address PW1 and PW9 were paid Rs.30,000/- each and the accused A1 to A3



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had failed to pay the balance of Rs. 1,20,000/- and Rs 30,000/- to the PW1 and PW9 and cheated them. Thereby, accused A1 to A3 had committed an offence punishable under section 120(b) read with 420 of Indian Penal Code and accordingly convicted by the trial court. The accused A1 to A3 had criminally conspired to induce poor people to sell their kidney by promising them huge amount and to cheat them by paying small amount and in pursuance of the said criminal conspiracy had obtained huge amount from the recipients and induced the poor people to represent before the organization committee with support of bogus ration card and false affidavit which were supplied by the accused A1 to A3 and after getting approval from the committee, the accused A1 to A3 get them operated upon and part with their kidney and failed to pay the amount and cheated the poor people.

5.4.He further submitted that Ex.P17 is the seizure mahazar which reveals that in pursuance of the confession statement of accused A2 on 26.01.2007 at 12.15 hrs, the police had seized the ration card in the name of Sivagami. Ex.P18 is the seizure mahazar in which the police had seized the ration card in the name of Krishnan, Munusamy and the affidavit in the name of Sivagami which were seized on 26.01.2007 at 13.45 hrs., near Koyembedu bus stand which was produced by the accused A1. Ex P19 is the seizure



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mahazar wherein the police had seized certain documents which were produced by the petitioner / accused A3 Raji @ Sundarraj on 26.01.2007 at 14.45 hrs., from his house situated in Door No.2/36 YMCA 1st Street, Chennai-81 and the same were seized by the then Investigating Officer in the presence of PW14 and PW15 and the same were marked by them, during examination of the witnesses PW14 and PW15 in the trial court by the Hon'ble XI Metropolitan Magistrate, Sadiapet. Hence, it is admissible, as per law.

5.5.He further submitted that the complaint of Tmt. Mallika, dated 19.01.2007 was received on 20.01.2007 and on the same day, a case was registered and taken up the same for investigation. As per the complaint, kidney of the defacto complainant was removed on 20.12.2004, which was mentioned in column 3(a) of the FIR and the same date was mistakenly mentioned in column 3(b) of the FIR, as information received date. But, as soon as the registration of FIR, it was submitted before the learned Additional Chief Metropolitan Magistrate, Chennai on the same day, i.e., 20.01 2007 at 3.00 pm. Hence, there was ample evidence to show that the complaint was received by the police on 20.01.2007 and mere mentioning of same date i.e., 20.12.2004 in column 3(a) & (b) of First Information Report was a



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typographical error and it was done by the then Investigating Officer neither intentionally nor willfully and the same was considered by the learned XI Metropolitan Magistrate, Saidapet and learned IV Additional Sessions Judge, Chennai stating that "the correction found in the First Information Report did not vitiates the case of the prosecution"

5.6.He further submitted that the conviction and sentence passed by the trial court against the accused A1 to A3 and the same was confirmed by the appellate court are as per law and there is no illegality or perversity on the orders of the Courts below. Further, there is no merits or bonafides in the Revision Petition filed by the petitioner / accused A3 Raji @ Sundarraaj and prays for dismissal of the petition.

6.Considering the facts and circumstances of the case and also considering the fact that the petitioner himself made to part with his kidney and now surrendered before the trial Court on 11.03.2024 and now he is confined in Central Prison, Puzhal, this Court is inclined to grant bail to the petitioner.



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7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/A3 is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned XI Metropolitan Magistrate, Saidapet, Chennai.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.



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14.03.2024
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Note: Issue order copy on 15.03.2024.

To

- 1.The Deputy Superintendent of Police,
Crime Unit-II,
Crime Investigation Department,
Guindy, Chennai – 32.
- 2.The XI Metropolitan Magistrate,
Saidapet, Chennai.
- 3.The IV Additional Sessions Judge,
City Civil Court, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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