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Crl.MP.Nos.6906 of 2024 in Crl.A.No.822 of 2023 and etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

**Crl.MP.Nos.6906, 6907 & 6908, 6914 of 2024,
13880 of 2023, 3686 of 2019**
in
**Crl.A.Nos.822 of 2023, 47 of 2019, 356 of 2021,
283 of 2019 and 137 of 2019**

Crl.M.P.No.6906 of 2024

Rathika @ Radha

...Petitioner/A19

Versus

State Rep. by
The Deputy Superintendent of Police,
CBCID Cuddalore,
Crime No.01.2016, CBCID,
North Police Station,
Cuddalore.

...Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.20/2018 on 04.01.2019 by the learned Sessions Judge, Mahila Court, Cuddalore and enlarge the petitioner on bail till the disposal of the appeal.



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For Petitioner : M/s. A.Veeramarthini
Legal Aid Counsel

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

Crl.M.P.No.6907 of 2024

Mohanraj @ Mohan

...Petitioner/A14

Versus

The State Rep. by
The Deputy Superintendent of Police,
CBCID
Cuddalore,
Crime No.01.2016

...Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.20/2018 on 04.01.2019 by the learned Sessions Judge, Mahila Court, Cuddalore and enlarge the petitioner on bail till the disposal of the appeal.

For Petitioner : Mr.R.John Sathiyam, Sr.Counsel
for Mr.C.Prabakaran

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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Crl.M.P.No.6908 of 2024

Mathivanan

...Petitioner/A15

Versus

The State Rep. by
The Deputy Superintendent of Police,
CBCID - Cuddalore,
Crime No.01.2016

...Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.20/2018 on 04.01.2019 by the learned Sessions Judge, Mahila Court, Cuddalore and enlarge the petitioner on bail till the disposal of the appeal.

For Petitioner : Ms. Shabnam Banu
for M/s.A.M.Esakkiappan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

Crl.M.P.No.6914 of 2024

Rajalakshimi @ Kavitha

...Petitioner/A11

Versus

The State Rep. by
The Deputy Superintendent of Police,
CBCID
North Police Station,
Cuddalore,
Crime No.01.2016

...Respondent/Complainant



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Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.20/2018 on 04.01.2019 by the learned Sessions Judge, Mahila Court, Cuddalore and enlarge the petitioner on bail till the disposal of the appeal.

For Petitioner : M/s. A.Arasu Ganeshan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

Crl.M.P.No.13880 of 2023

Girija @ Radha

...Petitioner/A9

Versus

The State Rep. by
The Deputy Superintendent of Police,
CBCID, Cuddalore,
Crime No.01.2016 of CBCID
North Police Station, Cuddalore

...Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.20/2018 on 04.01.2019 by the learned Sessions Judge, Mahila Court, Cuddalore and enlarge the petitioner on bail till the disposal of the appeal.



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For Petitioner : M/s. R.Sankarasubbu
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

Crl.M.P.No.3686 of 2019

Sharmila Begum

...Petitioner/A10

Versus

The State through
The Deputy Superintendent of Police,
CBCID, Cuddalore,
(In Crime No.01.2016 of CBCID
North Police Station, Cuddalore)

...Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.20/2018 on 04.01.2019 by the learned Sessions Judge, Mahila Court, Cuddalore and enlarge the petitioner on bail till the disposal of the appeal.

For Petitioner : Mr.B.M.Santharam
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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COMMON ORDER

[Order of the Court was made by SUNDER MOHAN, J]

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioners/A9, A10, A11, A14, A15 and A19, vide judgement and order dated 04.01.2019 passed in Spl.S.C.No.20 of 2018 on the file of the learned Sessions Judge, Mahila Court, Cuddalore, and to enlarge the petitioners on bail till the disposal of the appeals.

2. The petitioners in the above Sessions Case, were convicted and sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A9	Section 6 r/w 17 of the POCSO Act (2 counts)	To undergo RI for ten years and to pay a fine of Rs.10,000/- in default to undergo SI for two years for each count.
A10	Section 6 r/w 17 of the POCSO Act (2 counts)	To undergo RI for ten years and to pay a fine of Rs.1,000/- in default to undergo SI for two years for each count.



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<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A11	Section 6 r/w 17 of the POCSO Act (2 counts)	To undergo RI for ten years and to pay a fine of Rs.5,000/- in default to undergo SI for two years for each count.
A14 and A15	Section 6 of the POCSO Act (2 counts)	Each of them to undergo life imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo SI for three years for each count.
A19	Section 6 r/w 17 of the POCSO Act	To undergo RI for ten years and to pay a fine of Rs.5,000/- in default to undergo SI for two years.

3. Challenging the above conviction and sentence, the petitioners/A9,A10, A11, A14, A15 and A19 have filed the above Criminal Appeals and they seek suspension of sentence in the present petition.



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4. The case of the prosecution is that the petitioners/A9, A10, A11, A14, A15 and A19 along with the other accused with intention to commit sexual offences as against the victim children, P.W.2 and P.W.9 seduced them, abducted them and thereafter, committed penetrative sexual assault between the period from January 2014 to June 2014.

5. The learned counsel for the petitioners submitted that although petitioners had either no role or limited role were treated on par with the other accused and had been jointly tried with the other accused, which has caused serious prejudice to them; and that in any case, out of the sentence of 10 years imposed on them, they have served more than half of the sentence and hence the sentences imposed on them may be suspended.

6. Mr.M.Babu Muthumeeran, the learned Additional Public Prosecutor, submitted that the petitioners have been rightly convicted by the Trial Court and no ground has been made for suspension of sentence and prayed for dismissal of the petitions.



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7. We have carefully considered the rival submissions and perused the material available on record.

8. (i) Out of the petitioners, we find that the Accused Nos.9, 10, 11 and 19 have been sentenced to undergo 10 years of Rigorous Imprisonment and are in custody for about 5 ½ years. In view of the prolonged period of incarceration, we are of the view that the sentences imposed on them can be suspended.

(ii). As regards A14 and A15, we find that the allegation against them is that they were customers to the brothel house run by the other accused, and the only evidence is the identification of the accused by the victims, which is doubtful and suspect. Further, it is seen that the charge against A14 and A15 is that they committed penetrative sexual assault on the victims between 2nd and 14th of June 2014, which is contrary to the evidence of P.W.2. We hasten to add that it is an expression of our *prima facie* view. In view of the evidence against them and considering the period of



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incarceration of more than 5 years, we are inclined to suspend the sentence as against these petitioners as well.

9. Accordingly, these criminal miscellaneous petitions stand **allowed** and the sentences imposed on the petitioners/A9, A10, A11, A14, A15 and A19 are suspended on the following conditions:

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Cuddalore;
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an



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application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absences, as directed by the trial Court.

- (iv) Post the appeals for final hearing on 19.06.2024. The petitioners shall cooperate for the final hearing of the case on that day, as many of the co-accused are in custody, failing which the order granting suspension of sentence would be recalled.

[M.S.R.,J.] [S.M.,J.]
29.04.2024
(1/3)

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Issue order copy by 30.04.2024.
Upload the order copy forthwith.



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Copy to:-

- 1.The Sessions Judge, Mahila Court,
Cuddalore.
- 2.The Deputy Superintendent of Police,
CBCID Cuddalore,
CBCID, North Police Station,
Cuddalore.
- 3.The Superintendent of Prison,
Central Special Prison for Women, Vellore – 2.
- 4.The Superintendent of Prison,
Central Prison Cuddalore.
- 5.The Superintendent of Prison,
Women Special Prison, Vellore.
- 6.The Superintendent of Prison,
Central Prison Puzhal – III, Puzhal, Chennai.
- 7.The Superintendent of Prison,
Women Special Prison, Vellore.
- 8.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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13880 of 2023, 3686 of 2019
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