



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.19201 of 2023

A.Dhamodaran
S/o.Arjunan

.. Petitioner

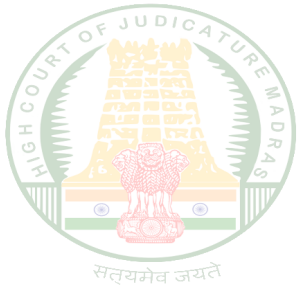
Vs.

1. The Superintendent of Central Prison
Puzhal-1
Chennai-600 066.

2. The Inspector of Police
Manimangalam Police Station
Kancheepuram District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying writ of mandamus to direct the first respondent to grant three days emergency leave to the lifer Saravanan, son of A.Dhamodaran, CT No.8416, now confined at Central Prison, Puzhal, Chennai-66 by considering the representation of the petitioner dated 26.06.2023 on the file of first respondent herein.



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For Petitioner : Mr.R.Sankarababu
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

In the case on hand, a strange situation has arisen.

2. To be noted, there is a bereavement for convict prisoner (convict prisoner's blood brother died this morning) and convict prisoner has to attend funeral. To be noted, writ petitioner's son, one Saravanan is the convict prisoner. Therefore, the matter was mentioned at half past ten, lunch motion was granted and captioned writ petition has been taken up by way of an additional list.

3. As regards strange situation, the writ petitioner's son one Saravanan, who is a lifer has already been granted suspension of sentence and bail in and by an order dated 15.06.2023 by this Bench in CrI.M.P.No.2775 of 2023 in CrI.A.No.235 of 2021 which reads as follows:

'Captioned 'Criminal Miscellaneous Petition' [hereinafter



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'Crl.MP' for the sake of brevity, convenience and clarity] has been filed in this Court on 02.02.2023 inter alia under Section 389 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] with a prayer for suspension of sentence / bail qua conviction and sentence dated 17.04.2021 in S.C.No.105 of 2016 on the file of 'Mahila Court, Chennai' which shall hereinafter be referred to as 'trial Court'.

2. Factual matrix in a nutshell i.e., case of prosecution which was believed by the trial Court is that on 12.05.2014, the injured (PW1) before the trial Court was abused with obscene words and assaulted with a knife taken out from trouser pocket of the accused resulting in grievous injuries; that there was love affair between the lone accused and injured / victim; that this occurrence on 12.05.2014 was in a shop in the city of Chennai; that charges framed were under Sections 341 and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity]; that in the trial Court, the injured / victim, who deposed as PW1 has not supported the case of prosecution; that the trial Court has convicted the accused on the basis of chief-examination of PW1 by saying that PW1 was not cross examined on the same day i.e., chief-examination deposition day; that PW1 was cross-examined after her marriage; that the trial Court proceeded on the assumption that PW1 did not support the case of prosecution fearing possibility of being repeatedly called to Court to testify which would affect her marriage / married life; that the trial Court proceeded on the basis that the victim is now happily married; that captioned Crl.MP has been filed after one dismissal of



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an earlier suspension of sentence petition and after withdrawal of another petition.

3. Before proceeding further, we deem it appropriate to set out the charges and sentences qua conviction / sentence of trial Court.

S.No.	Charge	Sentence
1	Section 341 of IPC	One month simple imprisonment
2	Section 307 of IPC	Life imprisonment with fine of Rs.5,000/- and three months simple imprisonment if there is default in payment of fine.

4. Mr.R.Sankarasubbu, learned counsel appearing on behalf of petitioner submitted that the conviction is weak as the victim herself did not support the case of prosecution and therefore, the petitioner verily believes that he has fair chances of acquittal in the main appeal.

5. Mr.R.Muniyapparaj, learned Additional Public Prosecutor (assisted by learned counsel Mr.Sylvester John) submitted to the contrary by saying that cross examination was more than 2 years after the victim deposed in chief and therefore, the conviction can certainly be sustained. Learned Prosecutor also submitted that one earlier suspension of sentence petition was withdrawn and another came to be dismissed.

6. We carefully considered submissions of both sides.

7. It is prima facie palpable that there is bright possibility of the conviction and sentence of trial Court being interfered with i.e.,



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the conviction of trial Court which proceeded on the basis of chief-examination of PW1 though PW1 victim did not support the case of prosecution in the cross-examination. This course was adopted by trial Court primarily on the ground that cross-examination was after marriage of PW1 and that she did not support the case of prosecution fearing that she might be repeatedly called to Court to testify which would affect her marriage / married life. This assumption has been articulated by trial Court in paragraph No.27 of judgment which is under appeal. As regards conduct of the petitioner, post conviction and sentence, there is nothing to demonstrate that there has been any prison offence or that it is not blemishless.

8. *As regards the test for suspension of sentence legal drill, this Bench reminds itself of **Omprakash** principle [**Omprakash Sahni Vs. Jai Shankar Chaudhary & another** reported in 2023 SCC OnLine SC 551] laid down by Hon'ble Supreme Court recently on 02.05.2023. In **Omprakash** principle, Hon'ble Supreme Court had held that what has to be looked into is something palpable qua fair chances of acquittal for the convict, the only rider is that it should not be by re-appreciation of evidence. We also notice that the appeal being taken up in its regular course would consume some time and this is a fit case for suspension of sentence and bail if **Omprakash** principle is applied to case on hand.*

9. *We deem it appropriate to put in a condition that the petitioner for the present would stay well away from the jurisdiction of scene of occurrence (Chennai) as well as Vellore where (we are*



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informed) the victim was residing in matrimonial home post marriage for some time.

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

(i) The sentence handed down to petitioner qua judgment and conviction dated 17.04.2021 in S.C.No.105 of 2016 on the file of the trial Court i.e., learned Sessions Judge, Mahila Court, Chennai, is suspended and the bail is subject to conditions which are set out in other sub-paragraphs infra;

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

(iii) The petitioner shall execute bonds of Rs.25,000/- [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 XIV Metropolitan Magistrate, Egmore.

(iv) The petitioner shall stay in Villupuram District and petitioner shall not move out of Villupuram District without leave of the Mahila Court (Fast Track Mahila Court), Villupuram District;

(v) The petitioner shall report before the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Villupuram District on the first working day of every week at 10.30 a.m pending disposal of the appeal; and

(vi) The petitioner shall not enter the area where the victim is residing and / or working.

Captioned Crl. MP is disposed of in the aforesaid manner with the aforesaid directives.'



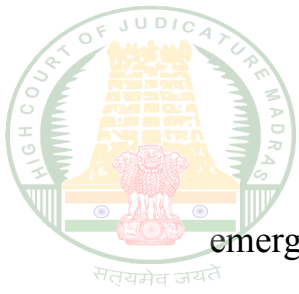
4. The above order captures the facts and therefore, we do not propose to labor on the same again.

5. This Bench is informed that convict prisoner is yet to satisfy the conditions for bail adumbrated in paragraph No.10 of the aforementioned order and therefore, remains incarcerated. In such situation, the aforementioned bereavement has occurred.

6. The plea in the captioned writ petition is for 3 days emergency leave.

7. Issue notice.

8. Mr.E.Raj Thilak, learned State Additional Public Prosecutor, who accepted notice for both respondents, submits, on instructions that convict prisoner has given in writing to prison authorities that he does not want to attend the funeral with escort. In the case on hand, owing to aforementioned strange situation, we deem it appropriate to grant 3 days



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emergency leave without escort as sentence qua convict prisoner has already been suspended and convict prisoner has already been granted bail. In this view of the matter, we make it clear that this order will not serve as a precedent in all the cases of emergency leave.

9. The convict prisoner is granted 3 days emergency leave without escort (26.06.2023 to 28.06.2023) both days inclusive. We make it clear that if the convict prisoner complies with the conditions adumbrated in paragraph No.10 of the aforementioned suspension of sentence / bail order in the *interregnum* i.e., in these 3 days, he will be entitled to the benefit of bail. If that not be so, the convict prisoner should surrender before the concerned jail authorities i.e., jail where he is now incarcerated by dusk on 28.06.2023 i.e., by 5.30 p.m. Though obvious, thereafter, it is open to the convict prisoner to comply with conditions for being enlarged on bail. If the conditions are complied, though obvious, it is made clear that he will stand governed by order dated 15.06.2023 made in Crl.M.P.No.2775 of 2023 in Crl.A.No.235 of 2021.



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10. Learned Prosecutor is requested to communicate this order to the concerned prison authorities forthwith (without waiting for uploading or issue of certified copy of this order) to ensure that the convict prisoner is able to attend funeral forthwith. Convict Prisoner should be permitted to leave today even if it is post dusk.

11. Captioned Writ Petition is disposed of in the aforesaid manner. There shall be no order as to costs.

12. Though the captioned writ petition has been disposed of by this order, let it appear in the list / be listed under the cause list caption 'FOR REPORTING COMPLIANCE' on 03.07.2023.

(M.S.,J.)

(R.S.V.,J.)

26.06.2023

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

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Note: Issue order copy forthwith
Upload order forthwith

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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

mk

To

1. The Superintendent of Central Prison
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Chennai-600 066.
2. The Inspector of Police
Manimangalam Police Station
Kancheepuram District.
3. The Public Prosecutor
High Court, Madras.

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