

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE S.MANU**

Friday, the 12th day of April 2024 / 23rd Chaithra, 1946

CRL.M.APPL.NO.1/2023 IN CRL.A NO.1064 OF 2023

**SC 1318/2021 OF ADDITIONAL DISTRICT & SESSIONS COURT(FOR THE TRIAL OF CASES
RELATING TO ATROCITIES AGAINST WOMEN AND CHILDREN), ERNAKULAM
PETITIONER/APPELLANT/ACCUSED:**

MONSON M.C. @ MONSON MAVUNGAL, AGED 53 YEARS, S/O. M.L.CHAKO,
MAVUNKAL HOUSE, CMC-26, CHERTHALA P.O., CHERTHALA VILLAGE, CHERTHALA
THALUK, ALAPPUZHA DISTRICT, NOW RESIDING ON RENT IN THE HOUSE OF
SMT. BINU BABURAJ, PRANAVAM, VLRA-15A, VATTAPPARAMBU LANE,
KALOOR.P.O., ELAMKULAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT, PIN - 682017.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031.

Application praying that in the circumstances stated therein the High Court be pleased to suspend the execution of sentence passed in Judgement dated 17.06.2023 in S.C.No.1318/2021 of the Court of Additional District & Sessions, Ernakulam (For the trial of cases relating to Atrocities & Sexual Violence Against Women and Children) pending disposal of the above appeal and to enlarge the petitioner/Appellant on bail.

This Application coming on for orders upon perusing the application and upon hearing the arguments of M/S.M.G.SREEJITH, V.G.ARUN (K/795/2004), P.JAYA, LUKE J CHIRAYIL, SWAPNALEKHA K.T., VIDYAJITH M., ROJIN DEVASSY, ANIL KUMAR P.T., BINCY JOSE, Advocates for the petitioner and of the PUBLIC PROSECUTOR for the respondent, the court passed the following:

P.T.O.

P.B.SURESH KUMAR & S.MANU, JJ.

Crl.M.Appln.No.1 of 2023
in
Crl.Appeal No.1064 of 2023

Dated this the 12th day of April, 2024

ORDER

S.MANU, J.

Petitioner/appellant is the sole accused in S.C.No.1318/2021 of the Additional District and Sessions Court, Ernakulam. The offences alleged against him in the final report are under Sections 5(p), (l), (j) (ii) r/w.6, 9(l), (p) r/w.10, 11(iii) r/w.12 of the Protection of Children from Sexual Offences Act, 2012 and Section 370 (1)(a), 342, 354A(1)(iii), 354A(2), 376(3), 376(2)((f),(n), 313 and 506(i) of Indian Penal Code.

2. The prosecution case in brief is as follows:-

The mother of the victim girl aged 17 years and her brother were employed under the accused. The accused offered them to reconstruct their dilapidated house in Kumbalangi Village and also to help the victim to continue

her studies. The accused misled the victim that he is a Doctor and offered to teach cosmetology to her. On 25.7.2019 at about 6 p.m., the accused and the victim were in the house by name 'Pranavam' in Vattapparambu Lane, Elamkulam Village, Kaloora Kara. The accused showed obscene pictures to the victim in his iPad and touched her with sexual intent. On the next day at about 4 p.m., the accused called her to the bed room situated in the same house and committed rape on her. He threatened the victim with dire consequences if the incident is revealed to anyone. After two days she was again raped in the same place of occurrence. It repeated on subsequent occasions also. On a day in October, 2019, the accused conducted pregnancy test of the victim using pregnancy test card and the result was positive. He thereafter terminated the pregnancy of the victim by administering tablet. The sexual assaults on the victim continued till she attained majority on 11.1.2020.

3. The crime against the petitioner was registered on the basis of the F.I.Statement furnished by the victim on

18.10.2021. PW20 S.H.O. of Ernakulam Town Police Station registered Ext.P17 F.I.R. as Crime No.1319 of 2021 of Ernakulam Town North Police Station. Later, the investigation was handed over to a special investigation team. On conclusion of investigation, final report was submitted alleging the offences stated above.

4. On completion of other formalities the trial commenced and prosecution examined PWs.1 to 22 on its side. Exts.P1 to P29 and MO1 were marked. The defence examined DW1. Exts.D1 to D12 were also marked. The learned Additional Sessions Judge, on appreciation of evidence, found the petitioner/appellant guilty of the offences punishable under Sections 5 (j) (ii), (l), (p) r/w.6, 9 (l), (p) r/w.10, 11 (iii) r/w.12 of the Protection of Children from Sexual Offences Act, 2012 and Sec.370 (4), 342, 354A (1) (iii) r/w.354 A (2), 376 (2) (f), 376 (2) (n), 313, 506 (i) of Indian Penal Code. The petitioner has been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- (Rupees One lakh only) for the offence under

Section 5(j) (ii) r/w.6 of the POCSO Act, 2012 with default imprisonment for six months. For the offence under Section 9(l) r/w 10 of the POCSO Act, 2012 he has been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/- (Rupees Fifty thousand only), in default of payment of fine to undergo rigorous imprisonment for three months. For the offence under Section 9(p) r/w.10 of the POCSO Act the petitioner has been sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.50,000/- (Rupees Fifty thousand only), in default of payment of which he shall undergo rigorous imprisonment for three months. He is further sentenced to undergo imprisonment for a period of three years and to pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) with default imprisonment for two months for the offence under Section 11(iii) r/w. 12 of the POCSO Act. Rigorous imprisonment for ten years and fine of Rs.50,000/- (Rupees Fifty thousand only) with default sentence of rigorous imprisonment for six months is the

punishment imposed for the offence under Section 370(4) of the IPC. For the offence under Section 342 of the IPC rigorous imprisonment for a period of one year has been imposed. He is sentenced to undergo imprisonment for life which shall mean remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only) for the offence u/s.376(2)(f) of the IPC. Default sentence of rigorous imprisonment for six months is also imposed for the said offence. Life imprisonment for remainder of his natural life and fine of Rs.1,00,000/- (Rupees One Lakh only) has been imposed for the offence u/s.376 (2) (n) of the IPC. Default sentence of six months rigorous imprisonment is also imposed for failure to pay fine for the said offence. For the offence u/s.313 of the IPC he is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.50,000/-(Rupees Fifty thousand only), in default of payment of fine he shall undergo rigorous imprisonment for six months. Rigorous imprisonment for one year has been awarded for the offence u/s.506(i) of the IPC. The

sentences shall run concurrently. The trial court also directed that the fine amount if realised shall be paid to the victim as compensation u/s.357(1) of Cr.P.C.

5. The petitioner was apprehended on 6.11.2021 and he is still in custody.

6. The learned counsel appearing for the petitioner/appellant submitted that the case of the victim is fabricated and the evidence adduced by the prosecution is shaky and shabby. He asserted that the prosecution has suppressed some crucial materials and has resorted to manipulations to secure conviction of the petitioner. He produced some documents along with Miscellaneous Application and sought to rely on the same in order to press the application for suspension of sentence. The further case of the learned counsel is that the evidence of the victim is untrustworthy and the learned Additional Sessions Judge failed to appreciate the serious lacunae in the case developed by the prosecution. He stressed that the conviction is mainly relying on the evidence of the victim,

which is not credible and there is no corroboration on material aspects. He fervently pleaded that the petitioner is entitled for suspension of sentence invoking Section 389 of the Cr.P.C.

7. The learned Special Government Pleader opposed the application and filed objection. The learned Special Government Pleader referred to various materials brought on record during trial as well as several judgments of the Apex Court to refute the submissions of the learned counsel for the petitioner.

8. We have heard the learned counsel for the petitioner and the learned Special Government Pleader elaborately. We have also perused the judgment of the learned Additional Sessions Judge and also the evidence adduced by both sides.

9. An appellate court is not expected to proceed for an elaborate assessment of the quality, reliability, admissibility, sanctity, etc. of the evidence as those considerations are relevant and required only at the time of

final hearing of the appeal. Considerations relevant for the purpose of deciding an application under Section 389 of the Cr.P.C. are distinct and different.

10. In **Preet Pal Singh v. State of Uttar Pradesh and another** [(2020) 8 SCC 645] the Hon'ble Supreme Court analysed the provisions of Sections 389 and 374 of the Cr.P.C. and laid down in paragraph '38' as follows:-

"In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail."

11. In **Vinay Kumar v. Narendra and others** [(2002) 9 SCC 364] the Apex Court held as follows:-

"The principle is well-settled that in considering the prayer for bail in a case involving serious offence like murder, punishable under Section 302 IPC, the court

should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.”

12. The aforesaid view has been reiterated by the Hon'ble Supreme Court in 1) **Ramji Prasad v. Rattan Kumar Jaiswal and another** [(2002) 9 SCC 366], 2) **Vasant Tukaram Pawar v. State of Maharashtra** [(2005) 5 SCC 281] and 3) **Gomti v. Thakurdas and Others** [(2007) 11 SCC 160].

13. In **Omprakash Sahni v. Jai Shankar Chaudhary & others** [(2023) 6 SCC 123] the Apex Court held that while undertaking the exercise to ascertain whether the convict has a fair chance of acquittal, what is to be looked into is something palpable. In other words, something which is very apparent or gross errors on the face of the record on the basis of which, the court can arrive

at a prima facie satisfaction that the conviction may not be sustainable. The Hon'ble Apex Court went on to hold that the appellate court should not re-appreciate the evidence at the stage of Section 389 of the Cr.P.C. and try to pick up few lacunas or loopholes here or there in the case of prosecution.

14. The learned counsel for the petitioner vehemently argued that there is unexplained long delay in lodging the FIR. The learned counsel also points out that there is serious doubt regarding the place of occurrence and attempted to refer to the additional documents produced by him along with an application. We will not be justified in referring to any material other than those admitted in evidence by the trial court. Unless this Court allows the petitioner/appellant to adduce additional evidence he is not entitled to place any materials other than those forming the part of records of the trial for consideration in this application or in the appeal. Therefore, we reject the contentions of the learned counsel for the petitioner raised on the basis of additional materials.

15. The prime contention of the learned counsel is that the evidence of the victim is unreliable. The Hon'ble Supreme Court in the judgment reported in (2012) 8 SCC 21 [**Rai Sandeep v. State (NCT of Delhi)**] held that the evidence of the victim of a sexual assault can be the sole basis of a conviction provided such evidence shall be of a sterling quality. The Hon'ble Apex Court held that the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The court considering the evidence of such witness should be in a position to accept it for its face value without any hesitation.

16. In the case of **Ganesan v. State** [(2020) 10 SCC 573], the Supreme Court observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

17. In the case of **State (NCT of Delhi) v. Pankaj Chaudhary** [(2019) 11 SCC 575], it was observed and held

that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It was further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises.

18. In the case of **Sham Singh v. State of Haryana** [(2018) 18 SCC 34], the Supreme Court observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It was further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

19. We have perused the deposition of the victim examined as PW1. We do not find that the same is unreliable and misleading as argued by the learned counsel

for the petitioner. As stated supra it is not within the realm of this Court while considering an application under Section 389 of the Cr.P.C. to arrive at conclusive findings regarding the veracity of the evidence of the prosecutrix. Only if we form an opinion that the evidence is prima facie unreliable and no other materials and circumstances proving the complicity of the accused are available, we can proceed to suspend the execution of sentence imposed on the petitioner/accused. Since the evidence of the victim is prima facie sufficient to support the findings and conclusions arrived at by the trial court in this case and taking note of the fact that there are other materials also against the petitioner/accused, we are of the view that his application for suspension of sentence is liable to be rejected. It is to be noted that the petitioner has been awarded the imprisonment for life on three different counts by the learned Additional Sessions Judge. Suspending the sentence for life imprisonment can be resorted only in exceptional cases. The heinous nature of the offence

allegedly committed by the petitioner/accused cannot be ignored. Gravity of the offence being one of the relevant factors for consideration, at this stage, we are of the firm view that this application cannot be entertained.

In the result, this Crl.M.Appln. is dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE



Sd/-
S.MANU, JUDGE

skj