

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

TUESDAY, THE 5TH DAY OF MAY 2020/15TH VAISAKHA, 1942

**CRL M.A No. 1 of 2019**

**in**

**CRL.A No.1197 OF 2018**

(Against the judgment passed in S.C. No. 219 of 2013 on the files of Hon'ble 2nd Additional Sessions Court, Ernakulam dated 14-9-2018)

Petitioner/Accused No.2

Anilkumar @ Cape Ani, Aged 42 years,  
S/o.Thankappan, Thachankeri House  
Maruthamkuzhi, Kanjirampara kara  
Sasthamangalam village, Thiruvananthapuram.

By Advocate SRI.R.ANIL

SRI.V.B.SUJESH MENON

SRI.T.ANIL KUMAR

SRI.THOMAS ABRAHAM

SRI.VIJIN KARTHIK

SRI.THOMAS SABU VADAKEKUT

**RESPONDENT** : Complainant.

State of Kerala, represented by the  
Public Prosecutor, High Court of Kerala,  
Ernakulam, Kochi-682031.

By Special Government Pleader Smt.Ambika Devi.S

THIS Crl.M.A No.1 of 2019 in Crl.A No.1197 of 2018 HAVING BEEN FINALLY  
HEARD ON 24.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**C.S.DIAS, J.**

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**Crl M.A No. 1 of 2019**

**in**

**Crl Appeal No.1197 of 2018**

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**Dated this the 5<sup>th</sup> day of May, 2020**

**ORDER**

This is the second application filed by the appellant, seeking an order to suspend the sentence passed against him by the IInd Additional Sessions Court Judge, Ernakulam in SC No.219 of 2013, and to release him on bail until the disposal of the appeal.

2. The appellant stands convicted for committing the offences punishable under Sections 366A and 372 of the Indian Penal Code. He is directed to undergo rigorous imprisonment for a term of seven years and pay a fine of Rs 55,000/- for each of the above offences, with default sentence of six months each for the above offences.

3. This Court by order dated 19.12.2018 in Crl M.A No.1 of 2018 filed in this appeal had dismissed the application for similar relief, by a detailed order.

4. Now, the appellant has filed the present application,

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*inter alia*, contending that this Court while dismissing Crl M.A No.1 of 2018 had observed that if there is a delay in disposing the appeal, the appellant is at liberty to move a fresh application, seeking suspension of execution of sentence. As there is no possibility of the appeal being heard on an early date; that the appellant could not bring to the notice of this Court several material facts; that the appellant is in detention for last more than one year and six months; and further that as the appellant is the sole bread winner of his family, it is essential to hear the appellant and suspend the execution of sentence.

5. The Investigation Officer has filed a detailed objection to Crl M.A No.1 of 2018, which is adopted as the objection to present application.

6. When the present application came up for hearing on 9.10.2019, another learned Single Judge placed the matter before the Hon'ble the Chief Justice for orders, as to whether the present application should be heard by the very same learned Judge who heard Crl M.A No.1 of 2018.

7. The Hon'ble the Chief Justice by order dated 4.11.2019, directed the appeal to be placed as per roster.

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8. The appellant has presently moved an application to hear Crl M.A No.1 of 2019 before the vacation Court. Leave was granted. Accordingly, this application was taken up before the vacation Court.

9. Heard Sri.B.Raman Pillai, learned Senior Counsel for the appellant and Smt.Ambika Devi.S, learned Special Government Pleader (Women and Children) for the respondent via video conferencing.

10. The learned Senior Counsel for the appellant argued that the learned Sessions Judge has on a mis-appreciation of evidence erroneously convicted the appellant. The appellant was only the paid driver of the first accused. The learned Senior Counsel took me through the relevant portions of the evidence, to drive home his contention that the conviction of the appellant is improper and wrong. According to him, there is no material on record to link the appellant with the other accused or substantiate that the appellant has committed the offences. Even the victim has not deposed that the appellant has committed the offences. He further argued that, along with the present case, the appellant and the other accused were tried in SC No.216 of 2013, S.C No.623 of 2014 and SC No.712

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of 2015, for allegedly committing the similar offences, by the same Court. The appellant was acquitted in the above cases. Hence, the benefit of the doubt should be given to the appellant, for the limited purpose of suspending the sentence. This Court had while dismissing Crl M.A No.1 of 2018 observed that, an attempt can be made to hear the main appeal without delay for which the lower court records were called. However, despite the lapse of one year and four months, the appeal has not been heard. The appellant is languishing in jail for two years and nine months now. In addition to the present detention, the appellant was a remand prisoner for one year and two months. The appellant has an aged mother and a mentally retarded daughter. Hence, the application may be allowed.

11. The learned Public Prosecutor vehemently opposed the application. She submitted that the written objection filed by the Investigating Officer in Crl M.A No.1 of 2018, is adopted as the written objection in the present application. According to her, the appellant and the other accused stands convicted in infamously known 'Varapuzha sex racket case'. In addition to the four sessions cases where judgments have been

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pronounced, there are sixteen other cases charged against the appellant and other accused, which are pending consideration at different stages. This appeal itself was posted for disposal on 9.3.2020. The appeal is included in the hearing list, and would be taken up immediately after the summer vacation. There is no pressing urgency to take up the application in the vacation Court. This Court has exhaustively considered all the contentions raised by the appellant for the same relief in Crl M.A No.1 of 2018, and dismissed the application. Hence, the appellant cannot re-agitate the same grounds now. If the execution of the sentence is suspended and the appellant is enlarged on bail, there is flight risk and the risk of the appellant influencing the witnesses and tampering with the evidence in the sixteen other connected cases, where trial is to commence. Hence, the application may be dismissed.

12. The question that emerges for consideration is whether the appellant is entitled to get the execution of sentence suspended and be enlarged on bail?

13. The Hon'ble Supreme Court in **Gomti v. Thakurdas [(2007) 11 SCC 160]** observed as follows:-

The mere fact that during the trial, they were

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granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”

14. Similarly, in State of **Haryana v. Hasmath [AIR 2004 SC 3936]**, it was observed by the Hon'ble Supreme Court that the appellate court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail.

15. This Court, in paragraph 13 of the order dated 19.12.2018 in Crl M.A No.1 of 2018 observed as follows:

“13. After having gone through the materials, I am of the view that there is nothing to distinguish between the acts committed by accused Nos 1 and 2. I am unable to accept the submission of the learned Senior Counsel that the version of the victim lacks credibility at this stage. It is not possible to have a detailed evaluation of the materials as

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the lower court records are not before this Court though the same has been called for. The fact that the accused Nos 1 and 2 are charged in as many as 24 crimes for procuring the girl and for forcing her into prostitution makes the allegations against them, one of an exceptional nature. I am not persuaded to suspend the execution of sentence insofar as accused Nos 1 and 2 are concerned at this stage.”

16. The above observation stares at the appellant. I am not inclined to take a contrary view in the present application.

17. The Investigating Officer in paragraph 17 of the objection has pleaded as follows:

“17. It is pertinent to note that this 'sex racket case of Varapuzha' had wide ramifications both inside and outside the State of Kerala. There were as many as 34 Sessions Cases charge sheeted against 78 accuseds and they were pending trial before the IInd Additional Sessions Court, Ernakulam. Out of these, the judgments in 8 cases were already pronounced. From among them, accused 1 and 2 were involved in SC 623/2014 (sentence suspended by this Hon'ble Court after one year of conviction on 21.8.2018). SC No.712/2015 (all accused acquitted) and in SC No.219/2013 (present case in which A1 to A3- all accused convicted). In fact, the acquittal of the accused in SC No.712/2015 cannot give a special circumstance for the accused who are convicted by the learned Judge based on the evidence of the victim girl and other circumstances. It is also to be noted that when the victim girl of 17 years

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who had been subjected to rape forcefully and without her consent in different places at different times may not be able to identify each one of them. This deficiency in one case cannot be treated as an advantage to the accused who had already been convicted. Therefore the contentions raised in this Criminal Miscellaneous Application filed by accused No.2 who shared the common intention with her, the king pin of such a heinous crime against the girl in her teens and which had shocked the conscience of the society is to be viewed seriously by this Hon'ble Court. There is a rampant increase of offences against women and children and it's hardly 2½ months since the court below had convicted the appellant accused for the heinous crime and therefore suspending the sentence and releasing the petitioner will send a wrong message to the society.”

18. Considering the gravity of the offences that the appellant stands convicted for; the observations made by this Court in Crl M.A No.1 of 2018, which is extracted above; the argument of the learned Public Prosecutor that, if the appellant is released on bail, there is a likelihood of him influencing the witnesses and tampering with the evidence in the connected cases which are pending trial; and the history sheet of the appellant, I am not inclined to allow this application. As this appeal is already posted for disposal along

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with the connected cases, the grievance of the appellant, that there is no chance of the appeal being heard at an early date, stands redressed.

19. The Registry is directed to post this appeal along with the connected criminal appeals for hearing, immediately after the summer vacation.

With the above observation, Crl M.A No.1 of 2019 stands dismissed.

**C.S.DIAS**  
**JUDGE**

sks/4.5.2020