



CRL MP(MD) No.12761 of 2023

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)**

Thursday, the Nineteenth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.VADAMALAI

CRL MP(MD) No.12761 of 2023

IN

CRL RC(MD) No.988 of 2023

VALATHI @ ARUMUGAM

... PETITIONER/PETITIONER

Vs

**THE INSPECTOR OF POLICE
THALAIYUTHU POLICE STATION,
TIRUNELVELI DISTRICT.
(CRIME NO.111 OF 2022)**

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed upon the petitioner in C.A No. 97 of 2022 on the file of the IV Additional District and Sessions Judge, Tirunelveli dated 23.02.2023 confirming the conviction and sentence passed in C.C No. 887 of 2022 by the Judicial Magistrate No.III, Tirunelveli dated 22.11.2022 and enlarge him on bail pending disposal of the main Criminal Revision Case.

Prayer in CRL RC(MD). 988/ 2023 :

To call for the records pertaining to the judgment of the Learned IV Additional District and Sessions Judge, Tirunelveli passed in C.A No. 97 of 2022 dated 23.02.2023 confirming the conviction and sentence of the petitioner imposed by the Judicial Magistrate No.III, Tirunelveli in C.C.No.887 of 2022 dated 22.11.2022 and set aside the same.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of

<https://www.mhc.tn.gov.in/judis>



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M/S.LENIN KUMAR.T, Advocate for the petitioner and of Mr.S.MANIKANDAN, Government Advocate on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner in C.A.No.97 of 2022 on the file of the learned IV Additional District and Sessions Judge, Tirunelveli, dated 23.02.2023, confirming the conviction and sentence passed in C.C.No.887 of 2022 by the learned Judicial Magistrate No.III, Tirunelveli, dated 22.11.2022 and enlarge him on bail pending disposal of the main Criminal Revision Case.

2. The case of the prosecution is that on 29.04.2022 at about 03.00 p.m., when the defacto complainant and her friend were talking near to Saibaba Koil at Naranammalpuram Bridge, the petitioner along with other accused appeared before the defacto complainant in auto bearing Registration No.TN-72-L-1639 and threatened the defacto complainant and her friend and robbed Rs.30,000/- value of gold articles and two cellphone from them and that on the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.111 of 2022 for the offence under Section 392 IPC.

3. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in C.C.No.887 of 2022 on the file of the learned Judicial Magistrate No.III, Tirunelveli.



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4. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7, exhibited 10 documents as Ex.P.1 to Ex.P.10 and marked 5 material objects as M.O.1 to M.O.5. The defence have adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 22.11.2022 convicting the petitioner for the offence under Section 392 IPC and sentenced them to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo 1 month Simple Imprisonment.

6. Aggrieved by the said judgment of conviction and sentence, the petitioner has preferred appeal in C.A.No.97 of 2022 and the learned IV Additional District and Sessions Judge, Tirunelveli, upon considering the evidence available on record and on hearing the arguments on both the sides, by confirming the conviction and sentence has dismissed the appeal vide judgment dated 23.02.2023. Challenging the judgment of the appellate Court, the petitioner/Accused No.4 has preferred the present revisions along with the above applications for suspension of sentence.

7. The learned counsel appearing for the petitioner would submit that the appellate Court failed to consider that there are lot of contradictions between P.W.1 and P.W.2 and they did not identify the case property exactly and that the above case has been registered against the petitioner and the other accused with sole intention to



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detain them under Act 14 of 1982, but the trial Court and the appellate Court have failed to consider that aspects. They would further submit that the alleged auto was stopped at the check post by the police and the properties were recovered and as such, it cannot be claimed to be recovered based on the confession from the second accused and the confession of the co-accused cannot be the basis for conviction, that the alleged arrest and recovery are sham and concocted, that the recovery mahazar witness P.W.4 would say that he did not witness the recovery, that there was no identification parade held and that the appellate Court, without considering the grounds raised and the evidence available on record, has mechanically dismissed the appeal.

8.The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the judgment of conviction and sentence passed by the trial Court has already been confirmed by the appellate Court and as of now, revision is pending before this Court. He would further submit that the petitioner/Accused No.4 was in judicial custody from 30.04.2022 till 27.05.2022 (27 days) and subsequently on the date of appellate Court judgment on 22.11.2022, he was committed to prison to undergo the remaining sentence and he is in prison till now.

9. As already pointed out, the petitioner was awarded with punishment of 3 years Rigorous Imprisonment.



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10. The learned counsel appearing for the petitioner would submit that the petitioner is in custody from 22.11.2022 and that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. They would further submit that the petitioner has already paid the fine amount.

11. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

12. The learned counsel appearing for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal revision and further the criminal revision is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

13. In the result, this Criminal Miscellaneous Petition is allowed. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.III,



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Tirunelveli;

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(ii) 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 to ensure their identity; and

(iii) The petitioner shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders 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 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

sd/-
19/10/2023

/ TRUE COPY /

20/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD
TO
1 THE IV ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TIRUNELVELI.

2 THE JUDICIAL MAGISTRATE NO.III
TIRUNELVELI.



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3 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, TIRUNELVELI DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE
THALAIYUTHU POLICE STATION,
TIRUNELVELI DISTRICT.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (CALL FOR RECORDS)

+1. C.C. to M/S.LENIN KUMAR.T Advocate SR.No.15441

ORDER
IN
CRL MP(MD) No.12761 of 2023
IN
CRL RC(MD) No.988 of 2023
Date :19/10/2023

SA/SAR. /20.10.2023/7P/9C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.