



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

Wednesday, the Twenty Second day of June Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice K.K.SASIDHARAN
and

The Hon`ble Mr.Justice B.GOKULDAS
CRL MP(MD) Nos.1588,5008 and 4971 of 2016
IN
CRL A(MD) No.274 of 2011

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CRL MP(MD)NO.1588/2016 IN CRL.A(MD)No.274 of 2011:

M.SARAVANAMUTHU ... PETITIONER/4TH RESPONDENT/4TH RESPONDENT/
4TH ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
CBI/SCB/CHENNAI. ... RESPONDENT/PETITIONER/APPELLANT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the Accused No.4/Petitioner on bail by recalling the non bailable Warrant issued on 27.01.2016 in CrI.M.P.(MD). No.594 of 2016 in CrI.A.(MD). No.274 of 2011 subsequently fresh warrant issued on 05.02.2016 in CrI.A.(MD). No.274 of 2011 on the file of this Honourable High Court.

CRL MP(MD)NO.5008/2016 IN CRL.A(MD)No.274 of 2011:

M.MURUGAN @ SORI MURUGAN ... PETITIONER/RESPONDENT NO.5

- Vs. -

1 STATE REP.BY
THE INSPECTOR OF POLICE,
CBI/SCB/CHENNAI. ...1ST RESPONDENT/APPELLANT

2 V.P.PANDI @ ATTACK PANDI
3 M.THIRUCHELVAM
4 AROCKIYAPRABU @ PRABHU
5 M.SARAVANAMUTHU ...RESPONDENTS 2 TO 5/RESPONDENTS 1 TO 4

6 VIJAYA PANDI
7 P.KANDASAMY
8 M.RAMESH PANDI @ ROBERT
9 G.RAMAIAH PANDIAN
10 M.VALLIVITTAN
11 M.THAYAMUTHU
12 V.SUDHAKAR
13 T.RAMESH KUMAR @ MECHANIC RAMESH
14 THIRUMURUGAN @ KATTUVASI MURUGAN

<https://hcservices.courts.gov.in/hcservices/>

15 I.RUBAN
16 MALIK BATCHA
17 SH.V.RAJARAM ..RESPONDENTS 6 TO 17/RESPONDENTS 6 TO 17



Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to all the reasons stated in the above mentioned paragraphs and the grounds of bail it may be pleased to enlarge the petitioner on bail in Crl.A(MD). No.274 of 2011 pending on the file of this Honourable Court.

CRL MP(MD)NO.4971/2016 IN CRL.A(MD)No.274 of 2011:

V.SUDHAKAR

..PETITIONER/RESPONDENT NO.12/RESPONDENT NO.12

-Vs-

STATE REP.BY

THE INSPECTOR OF POLICE,
CBI/SCB/CHENNAI.

..RESPONDENT/PETITIONER/APPELLANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail pending disposed of Crl.A(MD). No.274 of 2011.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.K.BALASUNDARAM, Advocate for the petitioner in Crl.MP(MD) No.1588/2016 and MR.ROBERT J.BERNATAS, Advocate for MR.P.BALASUBRAMANIAN, Advocate for the petitioner in Crl.MP(MD) No.5008/2016 and of MR.J.ANANDKUMAR, Advocate for the petitioner in Crl.MP(MD)No.4971/2016 and of MR.N.NAGENDRAN, Special Public Prosecutor for CBI Cases in all the petitions, the court made the following order:-

(Order of the Court was made by **K.K.SASIDHARAN, J.**)

The respondents 4,5 and 12 in Crl.A.(MD)No.274 of 2011 are the petitioners in these three Miscellaneous Petitions filed to enlarge them on bail. The petitioners were arrayed as accused Nos.4,5 and 12 in Sessions Case No.3 of 2009 on the file of learned Principal Sessions Judge, Madurai. The learned Sessions Judge acquitted all the accused including the petitioners. The prosecution, therefore, filed the Criminal Appeal, after obtaining Special Leave from this Court.

SUBMISSIONS OF PETITIONERS:

CRL.M.P. (MD)No.1588 of 2016:

2. The petitioner engaged a counsel to appear on his behalf. The counsel reported no instruction and the same resulted in issuing a non-bailable warrant by this Court. The police arrested him on 12.02.2016. He was remanded by this Court. According to the petitioner, notice was not issued after numbering the appeal. The petitioner engaged a counsel to contest the petition filed by the prosecution to condone the delay. The counsel failed to inform him about the registration of appeal and as such, he failed to give him further instruction or to engage another counsel to represent him.

CRL.M.P. (MD)No.5008 of 2016

<https://hcservices.courts.gov.in/hcservices> 3. The petitioner is arrayed as fifth respondent in Crl.A.(MD)No.274 of 2011. The petitioner entered appearance through a counsel after receiving notice in the application to condone the delay of 118 days in



filing the appeal. The counsel, without informing him to appear before the Court, has withdrawn his appearance on 17.01.2013. The Court, therefore, issued a warrant. The petitioner was not aware of the withdrawal of appearance by the erstwhile counsel.

CRL.M.P.(MD)No.4971 of 2016:

4. The petitioner engaged a counsel to contest the application filed by the prosecution to condone the delay in filing the appeal. The counsel died in 2011. The petitioner was not in the know of things thereafter. In the meantime, he was arrested on 22.02.2016, pursuant to the non-bailable warrant issued by this Court. He was remanded to judicial custody.

SUBMISSIONS:

5. The learned counsel for the respective petitioners submitted that the petitioners were not aware of the registration of appeal. None of the petitioners have received notice after numbering the appeal. They have engaged counsel to contest the application filed by the prosecution to condone the delay in preferring the appeal. The counsel engaged by them have withdrawn their appearance without intimating them. According to the learned counsel, they have now engaged counsel and they would appear before this Court on all the hearing dates. The learned counsel for the parties further submitted that they are prepared to argue the appeal even today.

6. The learned Special Public Prosecutor for CBI Cases submitted that it is not the intention of the prosecution to keep the petitioners in jail permanently. The prosecution wanted this appeal to be taken up for hearing early. Since the accused were absconding, appeal could not be taken up for hearing. According to the learned Special Public Prosecutor, in case the petitioners are prepared to argue the appeal without taking unreasonable adjournment, the prosecution has no objection in releasing them on bail.

DISCUSSION:

7. The petitioners were arrayed as accused Nos.4,5 and 12 in Sessions Case No.3 of 2009. The prosecution witnesses including police officers have turned hostile. The learned Sessions Judge acquitted all the accused including the petitioners. The Inspector of Police, CBI/SCB, Chennai, filed the instant appeal with an application to condone the delay. The petitioners have appointed advocates to contest the application to condone delay. The petitioners have taken up a consistent stand that they have not been informed by the counsel after registering the appeal and as such, they were not aware of the posting. The records maintained by the Registry supports the case of the petitioners with regard to service of notice. There is nothing on record to show that individual notices were served on the petitioners after condoning the delay. The very same counsel, who appeared for the petitioners during the stage of considering the application for condoning the delay, continued to appear on their behalf even after registering the appeal. The advocates, who earlier filed memo of appearance on behalf of the petitioners, have withdrawn their memo, without intimating them. The petitioners are, therefore, *prima facie* correct in their contention that



they were not aware of the posting and as such, they have not abstained willfully from appearing in Court.

8. There is no dispute that the petitioners were arrested pursuant to the non-bailable warrant issued by this Court. The prosecution is yet to apprehend the accused Nos.11 and 14. We are informed that accused No.11 is presently abroad. The Inspector of Police, CBI/SCB, Chennai, in his status report, wanted further time to execute the non-bailable warrants against those accused. The appeal could be taken up only after the appearance of the remaining accused. The prosecution has not filed any application so far to split up the case against those absconding accused. There is no point in keeping the petitioners in jail pending execution of warrant against other accused by the CBI, especially on account of engagement of counsel to argue the appeal on their behalf. We are, therefore, of the view that the petitioners have made out a case for enlarging them on bail.

9. The petitioners are directed to be released on bail on their executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two solvent sureties each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Madurai. The petitioners are directed to appear before the learned Chief Judicial Magistrate, Madurai, every day at 10.30 a.m., until further orders.

sd/-

22/06/2016

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

TO

- 1 THE PRINCIPAL SESSIONS JUDGE, MADURAI.
- 2 THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE INSPECTOR OF POLICE, CBI/SCB/CHENNAI.
- 5 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

- +1. C.C. to M/S K.BALASUNDARAM Advocate SR.No.32116
- +1. C.C. to M/S P.BALASUBRAMANIAN, Advocate SR.No.32169
- +1. C.C. To MR.J.ANANDKUMAR, Advocate SR.No.32021

ORDER IN
CRL MP (MD) Nos.1588, 5008 and 4971 of 2016
IN
CRL A (MD) No.274 of 2011
Date : 22/06/2016