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

Monday, the Twenty Fifth day of January Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice P.R.SHIVAKUMAR
and

The Hon`ble Ms.Justice V.M.VELUMANI

CRL MP(MD) No.425 of 2016 IN CRL A(MD) No.201 of 2015

SUNDARRAJ@RAJA

... PETITIONER/APPELLANT/ACCUSED(SINGLE)

Vs

STATE REP BY THE INSPECTOR OF POLICE
KALLIDAIKURICHI POLICE STATION,
TIRUNELVELI DISTRICT.
CR. NO. 289/2010

... RESPONDENT/RESPONDENT/COMPLAINANT

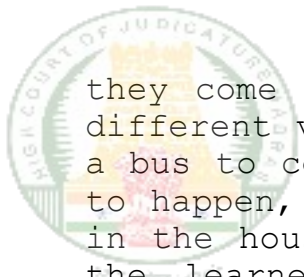
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence the execution of sentence by granting bail in S.C. No.375/2011 dated 4.8.2015 on the file of the 1st Additional & Sessions Judge, Tirunelveli, Tirunelveli District till the disposal of the Criminal Appeal No.201/2015.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU Senior Counsel for M/S K.PRABHU, Advocate for the petitioner and of MR.C.RAMESH Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

(Order of the Court was made by P.R.SHIVAKUMAR, J)

The sole accused, who was prosecuted for offences under Sections 294(b), 506(ii) and 302 of the Indian Penal Code in S.C.No.375 of 2011 before the learned First Additional District and Sessions Judge, Tirunelveli and was convicted for all the offences with various sentences ranging upto the life imprisonment, has filed the above Criminal Appeal in Crl.A.(MD)No.201 of 2015 against the judgment of the Trial Court dated 04.08.2015 both regarding conviction and sentence. Pending disposal of the Criminal Appeal, he seeks suspension of substantive sentence and release on bail by filing the present petition under Section 389(1) of the Criminal Procedure Code.

2. Mr.V.Kathirvelu, learned Senior Counsel arguing for Mr.K.Prabhu, counsel on record for the petitioner, submits that the petitioner was convicted based on the evidence of chance witnesses and that the earliest information given to the police by the Village Administrative Officer of the concerned Village, namely, P.W.7 was suppressed and the case came to be registered by the police based on the statement of P.W.1, who is none other than the brother of the deceased. It is the further submission of the learned Senior Counsel that the presence of PWs.1 to 4 is highly improbable because



they come forward with a story that though they are residing in a different village, they came to the place of occurrence by boarding a bus to cover the distance of 10 Kilometres anticipating something to happen, after having received information that there was problem in the house of the deceased. Based on the above said statements, the learned Senior Counsel for the petitioner submits that the petitioner has got valid grounds to be argued in the appeal and he has got fair chances of success in the appeal and that hence, he should be granted the relief of suspension of sentence and his release on bail pending disposal of the Criminal Appeal.

3. The learned Senior Counsel for the petitioner also brings it to the notice of the Court that the petitioner was on bail throughout the period of trial and he had not violated any of the conditions on which he was granted bail during the period of trial.

4. On the other hand, Mr.C.Ramesh, learned Additional Public Prosecutor would submit that there are eye witnesses whose evidence cannot be disbelieved simply for the reason that they happen to be the close relatives of the deceased; that the evidence of P.W.7-Village Administrative Officer as if he gave the information of the death of the deceased first in point of time to the police could not be believed as it is a solitary piece of evidence not corroborated by any other evidence and that hence, the points urged by the learned Senior Counsel for seeking the relief of suspension of sentence and release of the petitioner on bail should be rejected as untenable.

5. In this regard, the learned Additional Public Prosecutor also draws our attention to an order of this Court dated 26.10.2015 made in M.P.(MD)No.1 of 2015 in the very same Criminal Appeal, dismissing the earlier plea for suspension of sentence.

6. The contentions raised by the learned Senior Counsel for the petitioner and by the learned Additional Public Prosecutor are taken into consideration by this Court.

7. Upon such consideration and after perusal of the material records, this Court is of the view that while dealing with a petition for suspension of sentence and release of the petitioner on bail pending disposal of the Criminal Appeal, this Court cannot make a definite finding as to whether the evidence of the particular witnesses can be relied on or not. It shall be sufficient for the petitioner to point out that there are circumstances militating against the reliability of the evidence of particular witnesses and that there are arguable points showing presence of chances of success in the appeal. The mere fact that the earlier petition was dismissed shall not take away the power of the Court to consider the second application for suspension of sentence and release of the petitioner on bail.

8. The learned Senior Counsel for the petitioner is able to show that the grounds other than those raised before this Court in



the earlier bail application have been raised in the present petition. In addition, the learned Senior Counsel for the petitioner also submits that passage of nearly three months time should also be considered as change of circumstances for seeking the relief of suspension of sentence once again, even though the first attempt resulted in failure.

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9. This Court, upon considering the submissions made on both sides and on perusal of the records, is satisfied that there is substance in the contention raised by the learned Senior Counsel for the petitioner that there are arguable points, namely suppression of the earliest information and the suspicion on the presence of the alleged eye witnesses and that the petitioner has got fair chances of success in the appeal. Under the said circumstances, this Court deems it appropriate to grant the relief of suspension of sentence and direct the release of the petitioner on bail subject to certain conditions.

10. In the result, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended and the petitioner shall be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) along with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Ambasamudram with a further condition that after such release, the petitioner shall appear before the Committal Magistrate (Judicial Magistrate, Ambasamudram) once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal or until further orders.

sd/-

25/01/2016

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

TO

- 1 THE JUDICIAL MAGISTRATE, AMBASAMUDRAAM
 - 2 THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI
 - 3 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI
 - 4 THE INSPECTOR OF POLICE
KALLIDAIKURICHI POLICE STATION, TIRUNELVELI DISTRICT.
 - 5 THE ADDL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
 - 6 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
- +1cc to Mr.K.Prabhu, Advocate Sr.No.4310

ORDER IN

CRL MP(MD) No.425 of 2016 IN

CRL A(MD) No.201 of 2015

Date :25/01/2016