



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

Thursday, the Twenty Eighth day of January Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice P.R.SHIVAKUMAR
and
The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) No.442 of 2016
IN
CRL A(MD) No.169 of 2015

MUTHUKUMAR

..PETITIONER/APPELLANT/ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
PANAVALICHATHIRAM POLICE STATION,
TIRUNELVELI DISTRICT.
CR. NO. 123/2009

..RESPONDENT/RESPONDENT/COMPLAINANT

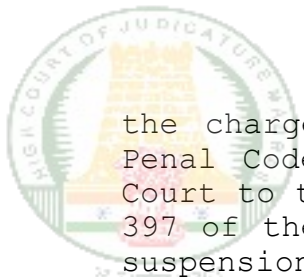
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the execution of sentence by granting bail in S.C. No.42 of 2011 dated 8.7.2015 on the file of the Mahilar Neethimandram, Tirunelveli, Tirunelveli, pending disposal of the above CRL A(MD)No.169 of 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 MR.J.SENTHILKUMAR, 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 petitioner herein figured as the second accused in Sessions Case No.42 of 2011 on the file of Mahalar Neethimandram, Tirunelveli. Totally four persons were prosecuted for various offences and out of the four, two (A-3 and A-4) were acquitted of all the charges. One Vairamuthu (A-1) was convicted for the offences under Sections 457, 302 and 397 of the Indian Penal Code. The petitioner herein (A-2) was convicted for an offence under Section 397 r/w 109 of the Indian Penal Code alone. As against the conviction, the petitioner herein (A-2) preferred the above appeal. Pending disposal of the appeal, viz., Crl.A.(MD)No.169 of 2015, the petitioner has prayed for suspension of substantive sentences and his release on bail.

2. Mr.V.Kathirvelu, learned Senior Counsel appearing for Mr.J.Senthilkumar, learned counsel for the petitioner submits that even though the petitioner was prosecuted for offences under Sections 120-B, 457 r/w 109, 376 r/w 109 and 302 r/w 109 and 397 r/w 109 of the Indian Penal Code, he was acquitted of all other charges except



the charge for an offence under Section 397 r/w 109 of the Indian Penal Code. The learned Senior Counsel draws the attention of this Court to the fact that A-1 was convicted for an offence under Section 397 of the Indian Penal Code and he has been granted the benefit of suspension of sentence and release on bail, by an order of this Court dated 05.01.2016 made in M.P.(MD)No.1 of 2015 in CrI.A.(MD)No.170 of 2015. The same is not disputed by Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the respondent.

3. We have also perused the copy of the said order produced by the learned Senior Counsel for the petitioner. In the said order itself, this Court adverted to the fact that no charge under Section 397 of the Indian Penal Code can stand independently as it is not at all a penal provision and that it simply prescribes a minimum sentence alone when the offences of robbery or dacoity are committed using deadly weapon or causing grievous hurt or making attempt to cause death or grievous hurt. Hence, Section 397 can be read with Section 392 or 395 or 396, as the case may be. It cannot have an independent existence. This Court, in the order dated 05.01.2016 made in M.P.(MD)No.1 of 2015 in CrI.A.(MD)No.170 of 2015, referred to the said discrepancy in the proceedings before the Trial Court. In addition, the person, who is said to have committed the offence of robbery, has already been granted the benefit of suspension of sentence. The petitioner, who is said to have abetted the offence, who was also not present in the scene of occurrence according to the learned Senior Counsel for the petitioner, should not be denied such benefits.

4. In addition, the learned Senior Counsel submits that the allegation against the petitioner is said to be connected with the commission of the offence only on the basis of the alleged recovery of the stolen property, which would show that at best, only an offence under Section 411 of the Indian Penal Code can be made out against the petitioner.

5. The submissions of Mr.C.Ramesh, learned Additional Public Prosecutor on the above said contentions made by the learned Senior Counsel for the petitioner are also heard.

6. The learned Additional Public Prosecutor submits that as recovery was made from the petitioner, the case against him stands substantiated and that he should not be granted the benefit of suspension of sentence and release on bail.

7. We applied our mind to the above said submissions made on both sides.

8. The submissions made by the learned Senior Counsel are appealing and the same cannot be rejected outright as untenable. The said submissions make out a *prima facie* case that the petitioner has got an arguable case and he has got fair chance of success in the appeal, which alone shall be gone into at the time of considering the petition for suspension of sentence and grant of bail pending disposal of the appeal. Under the said circumstances, we are of the view that the substantive sentences can be suspended and the petitioner shall be directed to be released on bail on conditions.



9. In the result, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner (A-2) 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, Sankarankovil with a further condition that after such release, the petitioner shall appear before the committal Court (Judicial Magistrate, Sankarankovil) once in a month i.e., on the first working day of every English calender month at 10.30 a.m., till the disposal of the appeal or until further orders.

sd/-
28/01/2016

/ TRUE COPY /

Sub-Assistant Registrar

TO

1 THE JUDICIAL MAGISTRATE,
SANKARANKOVIL.

2 -DO- THRO' THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

3 THE JUDGE,
MAHALIR NEETHIMANDRAM, TIRUNELVELI,
TIRUNELVELI DISTRICT.

4 THE INSPECTOR OF POLICE
PANAVALICHATHIRAM POLICE STATION,
TIRUNELVELI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

+1. C.C. to M/S J.SENTHILKUMAR Advocate SR.No.5006

akm/29.01.2016/ 3p- 7c/AAL/MPA/SAR-I

ORDER
IN
CRL MP(MD) No.442 of 2016
IN
CRL A(MD) No.169 of 2015
Date :28/01/2016