



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

Thursday, the Seventh day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.10382 of 2017
IN
CRL A(MD) No.456 of 2017

SELVAM @ SELVARAJ

... PETITIONER/ APPELLANT/ SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
(USILAMPATTI CIRCLE),
UTHAPPANAICKANOOR POLICE STATION,
MADURAI DISTRICT.
IN CRIME NO.91 OF 2013

... 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 imposed on the Petitioner/Appellant/Accused in S.C.No.97 of 2014 dated 24.10.2017 on the file of the Learned Vth Additional District and Sessions Judge, Madurai and enlarge him on bail pending disposal of the appeal and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.G.KARUPPASAMY PANDIAN, Advocate for the petitioner and of M/S.C.MAYILVAHANA RAJENDRAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed by the Petitioner / Appellant / Sole Accused, praying to suspend the sentence of imprisonment imposed on him, by the learned Vth Additional District and Sessions Judge, Madurai, in its order dated 24.10.2017 in S.C.No.97 of 2014 pending disposal of the above Criminal Appeal.

2. Aggrieved by the judgment of the conviction the appellant filed a present appeal before this Court. The petitioner is also seeking suspension of sentence till the disposal of the present appeal.

3.After trial, he has been convicted and sentenced as under:

Conviction	Sentence
Section 306 of IPC	5 years R.I + Fine of Rs.2,500/-, i/d 3 months S.I.



4. Fine amount imposed by the trial Court has been paid by the petitioner.

5. The learned counsel appearing for the petitioner / appellant submitted that the trial Court has framed a charge under Section 302 of IPC, but the trial Court convicted the petitioner under Section 306 of IPC. There is no evidence at all in respect of an offence under Section 306 of IPC. The learned counsel for the petitioner also referred the Judgment of the Hon'ble Apex Court reported in (2016) 3 MLJ (Cr1) 116 (SC) R.Rachaiiah Vs Home Secretary, Bangalore. The learned counsel for the petitioner further submitted that the arrest of the petitioner was not supported by Pws.1 and 3 in the cross examination. The date of occurrence was on 22.06.2017 at about 5.30 p.m. FIR was registered on 23.06.2013 at 09.00 p.m. The first complaint was given by the PW1 was suppressed in this case as per the evidence of PW1. He further submitted that the petitioner / appellant is having arguable points in this appeal and he is having a prima facie case in his favour and the petitioner was on bail during trial.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that the Trial Court has rightly convicted the accused on the basis of the evidence adduced by the prosecution during trial and the petitioner / appellant is not having any prima facie case in the appeal. However, the learned Additional Public Prosecutor has no serious objection to grant an order of suspension in respect of the conviction under Section 306 of IPC, when the charge was framed under Section 302 of IPC. The trial Court has convicted the petitioner at the time of judgment under Section 306 of IPC and also the charge against the petitioner under Section 302 was not proved by the prosecution.

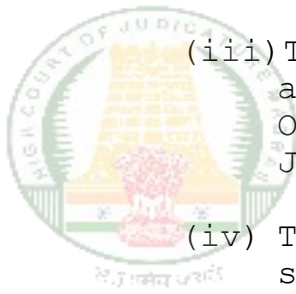
7. This Court heard the submissions made by the learned counsel appearing for the petitioner / appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record, including the impugned Judgment of the Court below.

8. Considering the above facts and circumstances of the case, this Court is of the view that there are certain arguable points involved in this Criminal Appeal and they are required to be examined in detail in the main Appeal. I see prima facie case in favour of the petitioner / appellant, for grant of an order of suspension.

9. On considerations, ordered as under:-

(i) Appeal bail granted.

(ii) Sentence of imprisonment ordered by the trial Court alone is suspended, till the disposal of the



(iii) There shall be two sureties and they shall execute a bond for Rs.15,000/- (Rupees Fifteen Thousand Only) each to the satisfaction of the learned Judicial Magistrate No.II, Usilampatti.

(iv) The petitioner / appellant shall appear before the said Court on the first working day of every month at 10.30 am., until further orders.

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sd/-
07/12/2017

/ TRUE COPY /

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

TO

1. THE VTH ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.

2. THE JUDICIAL MAGISTRATE NO.II, USILAMPATTI.

3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI.

4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5. THE INSPECTOR OF POLICE, (USILAMPATTI CIRCLE),
UTHAPPANAICKANOOR POLICE STATION, MADURAI DISTRICT.

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

+1. C.C. to M/S.AK.AZAGARSAMI Advocate SR.No.35869

ORDER
IN
CRL MP (MD) No.10382 of 2017
IN
CRL A (MD) No.456 of 2017
Date : 07/12/2017

MS/CM-VR/SAR.3/11.12.2017/3P.8C