



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

Thursday, the Eighteenth day of May Two Thousand Seventeen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.V.MURALIDARAN
and
The Hon`ble Mr.Justice N.SESHASAYEE

CRL MP(MD) No.4036 and 4187 to 4189 of 2017
IN
CRL A(MD) No.297 and 328 of 2016

ASHOK KUMAR
(AS THE ORDER OF TRAIL COURT,
THE NAME OF APPELLANT IS
ASHOK KUMAR, S/O.RAMANATHAN) ... PETITIONER/ACCUSED NO.1
IN CRL MP(MD)NO.4036/2017 IN CRL A(MD)NO.297/2017

CHANDRASEKAR ...PETITIONER/1ST APPELLANT
IN CRL MP(MD)NO.4187/2017 IN CRL A(MD)NO.328/2017
PANDI ...PETITIONER/3RD APPELLANT
IN CRL MP(MD)NO.4188/2017 IN CRL A(MD)NO.328/2017

MATHI ...PETITIONER/2ND APPELLANT
IN CRL MP(MD)NO.4189/2017 IN CRL A(MD)NO.328/2017

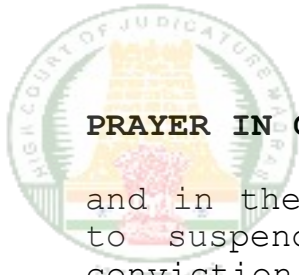
Vs

THE STATE REP.BY ITS
THE DEPUTY SUPERINTENDENT OF POLICE,
MELUR, MADURAI DISTRICT ... RESPONDENT/RESPONDENT
IN CRL MP(MD)NO.4036/2017 IN CRL A(MD)NO.297/2017

THE STATE REP.BY THROUGH
THE DEPUTY SUPERINTENDENT OF POLICE,
MELUR POLICE STATION,
MADURAI DISTRICT
CRIME NO.962/1991 ... 1st RESPONDENT/RESPONDENT
IN CRL MP(MD)NO.4187 TO 4189 /2017
IN CRL A(MD)NO.328/2017

SURESH
(R2 IMPEADED AS PER ORDER
OF THIS HON'BLE COURT MADE
IN CRL MP(MD)NO.9805/2016
IN CRL A(MD)NO.328/2016

...2nd RESPONDENT
IN CRL MP(MD)NO.4187 TO 4189 /2017
IN CRL A(MD)NO.328/2017



PRAYER IN CRL MP(MD)NO.4036/2017 IN CRL A (MD)NO.297/2016 :

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of appellant passed in the order of conviction of Learned III Additional District Sessions Judge in Spl.S.C.139 of 2004 pending disposal of Criminal Appeal.

Prayer in CRL MP(MD). 4187/ 2017 IN CRL A (MD)NO.328/2016:

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 by the learned III Additional Session Judge(PCR Cases), Madurai dated 03/08/2016 made in Spl.S.C.NO.139/2004 and release the petitioner on bail pending disposal of the above criminal appeal Crl.A.No.328/2016 on the file of this Honourable Court.

Prayer in CRL MP(MD). 4188/ 2017 IN CRL A (MD)NO.328/2016:

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 by the learned III Additional Sessions Judge(PCR Cases), Madurai dated 03/08/2016 made in Spl.S.C.NO.139/2004 and release the petitioner on bail pending disposal of the above criminal appeal Crl.A.No.328/2016 on the file of this Honourable Court.

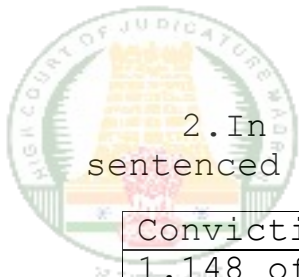
Prayer in CRL MP(MD). 4189/ 2017 IN CRL A (MD)NO.328/2016:

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 by the learned III Additional Sessions Judge(PCR Cases), Madurai dated 03/08/2016 made in Spl.S.C.NO.139/2004 and release the petitioner on bail pending disposal of the above criminal appeal Crl.A.No.328/2016 on the file of this Honourable Court.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S. SMA. JINNAH, Advocate for the petitioner IN CRL MP(MD) NO.4036/2017 IN CRL A(MD)NO.297/2017 and of MR.R.MANICKARAJ Advocate for M/S.VEERA ASSOCIATES for the Petitioner IN CRL MP(MD)NO.4187 to 4189/2017 IN CRL A(MD)NO.328/2017 MR.A.RAMAR Additional Public Prosecutor for the Respondent IN CRL MP(MD)NO.4036/2017 IN CRL A(MD) NO.297/2017 and 1st Respondent IN CRL MP(MD)NO.4187 to 4189/2017 IN CRL A(MD)NO.328/2017 and MR.P.RATHINAM Advocate for the 2nd Respondent IN CRL MP(MD)NO.4187 to 4189/2017 IN CRL A(MD)NO.328/2017 on behalf of the Respondents the court made the following order:-

[Order of the Court was made by M.V.MURALIDARAN,J.]

The petitioners/appellants challenge the legality and propriety of the conviction and sentence recorded by the trial Court in the above said Criminal Appeals. The petitioners herein/appellants are accused No.1, 2, 3 and 5 in Special S.C.No.139 of 2004, on the file of the learned III Additional Sessions Judge/PCR Court, Madurai.



2. In the said Court, the petitioners were convicted and sentenced as under:

Conviction	Sentence
1.148 of IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month.
2.307 of I.P.C. r/w Section 3(2)(v) of SC/ST Act.	Life imprisonment and to pay a fine amount of Rs.2000/- and in default to undergo simple imprisonment for six months.

3. The case of the backdrop of the prosecution is as follows:

The petitioners herein in the respective petitions have come up with this petition to suspend the sentences imposed on them and to grant bail, pending disposal of the above criminal appeals. The petitioners in the respective cases are accused Nos.1, 2, 3 and 5 in Crime.No.962 of 1991. The above said criminal case was registered by the respondent police for the occurrence taken place on 13.11.1991 at about 05.45 p.m., near the rickshaw-stand in front of Melur Bus Stand, Madurai District. Immediately, after 15 minutes of the occurrence, the injured/PW1 gave complaint before the respondent police at 06.00 p.m. to PW10, the Sub-Inspector of Police, Melur Police Station and the same was registered in Crime No.962 of 1991 against the petitioners in the above cases under Sections 148 and 307 of IPC r/w Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The defence points for the consideration of the suspension of sentence:

According to the learned Senior Counsel for the petitioners in the respective appeals, it is the admitted case of the prosecution that there is no whisper in Ex.P1-Complaint about the uttering the word of the caste name of PW1. Hence, in the absence of such utterance, it could easily be presumed that there could not be any intention on the part of the appellants to commit such an occurrence to invoke the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, the conviction and sentence against the petitioners in Special S.C.No.139 of 2004 for the offence under Section 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is without any basis, evidence and the same is unknown to the criminal jurisprudence. Further, PW1 who is an injured witness, was treated by PW-11 Doctor, through whom Ex.P-18 Wound Certificate was marked, wherein it is mentioned that the injuries are simple in nature. Hence, the learned Senior Counsel contended that the trial Court without considering the above said aspect convicted the petitioners to undergo life imprisonment which is highly excessive and arbitrary. After the conviction, the

petitioners in the respective cases are in judicial custody from 03.08.2016 onwards and they are in jail for more than 9 months.

5.The learned Senior Counsel for the petitioners submitted that there is no word for absuving the PW1 with his caste name, which was not stated in the complaint in Ex.P1. When there is no word abusing by the accused against the PW1, then the provision under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, would not filed against the accused. He has also submit that the Accident Register was not marked, which would have disclosed the earliest version of the injured/PW1. But, the Wound Certificate alone was marked through PW11-Medical Officer of the Government Hospital, Melur and apart from this, all the injuries alleged to be made by this accused are simple in nature.

6.The learned Senior Counsel for the petitioners further submitted that they are on bail throughout the trial. It is further submitted that there are very many legal infirmities in the conviction recorded by the trial Court and they are required to be revised. The learned trial Judge has not considered the infirmities in this case and there are several legal other points are there. Since the petitioners have bright chance of success in these appeals and they were on bail throughout the trial. There is prima facie case in favour of the petitioners and hence they prayed for the suspension of sentence and for bail.

7.The learned Additional Public Prosecutor submitted that the trial Court has rightly convicted and appropriately passed sentence on the petitioners/appellants. As the learned trial Court has passed the judgment after careful scrutiny of the evidence in full, the findings of the learned trial Judge may not be subjected for interference. Further, the well considered judgment of the learned trial Court would show that there is no prima facie case in favour of the petitioners. The learned Additional Public Prosecutor has raised objections strongly to release the petitioners/appellants on bail. He represented that these petitioners/appellants were abused PW1 viz., the defacto complainant in the caste name and also in filthy languages. PW1 also given the complaint with details about the specific overtact attributed by all the accused within 15 minutes from the date of occurrence, PW1 has given the complaint. All the witnesses were deposed about the offences committed by all the accused.

8.The impleading intervening petitioner namely the defacto complainant filed an application in CrI.M.P.(MD)No.9805 of 2016, but it is still pending and on behalf of the intervener/defacto complainant, the learned counsel Mr.L.M.Vijai Boominathan representing Mr.P.Rathinam, learned counsel for the intervener/defacto complainant is vehemently opposed and argued.



9. The learned counsel for the intervener/defacto complainant submit that these petitioners/appellants have no right seeking for suspension of sentence and bail. Since there is prima facie was made out before the trial Court and the same was considered by the trial Court and convicted these petitioners/appellants. Apart from this, the petitioners/appellants' first application was considered by the Hon'ble Division Bench of this Court in CrI.M.P. (MD) Nos. 7238 and 8418 to 8420 of 2016 and dismissed their applications on 24.10.2016, by considering all aspects of these petitioners/appellants as well as the prosecution. The said order in the above said applications are well considered order and the applications were dismissed only recently. Therefore, they have not entitled to suspension of sentence and bail and prayed this Court for dismissal of these applications.

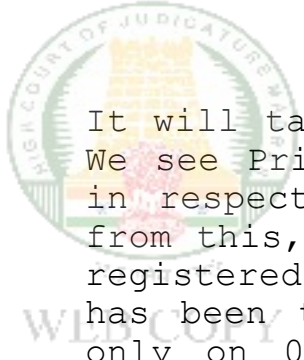
10. We have anxiously considered the rival submissions, perused the averments in the bail petition, impugned Judgment and the relevant evidence on record.

11. Appreciation on the findings of the learned trial Court:

Perusing the impugned judgments and the materials on record, prima facie it would show that the injury sustained by PW1 is simple in nature. Though it is recorded that the injury is simple in nature, charges were framed including under Section 307 of Indian Penal Code. Since charges were framed under Section 307 of Indian penal code, the provision under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is incorporated and charges were framed in this regard also. This aspect has to be probed in detail by receiving the arguments on either side by testifying all the related materials only at the time of final disposal of the above appeals.

12. At the same time, this Court has found and taken into consideration, the observation made by the earlier order dated 24.10.2016 made in CrI.M.P. (MD) Nos. 7238 of 2016 and 8418 to 8420 of 2016, passed by the Hon'ble Division Bench of this Court and dismissed the application filed by the respective petitioners in the above appeal seeking to suspend the sentence imposed on them. The Hon'ble Division Bench in the above said order was pleased to direct the registry to prepare the typed set of papers and to dispose of the above appeals at the earliest by giving priority as the Sessions case is of the year 2004. However, the registry has not yet prepared the typed set of document and therefore the above appeal could not be taken up for the final hearing till date.

13. We are of the view that certain eminently and expertise arguable points are involved in this criminal appeal and they are required to be examined in detail in the main criminal appeals.



It will take some time for the disposal of this criminal appeal. We see Prima facie case to consider the case of the petitioners in respect of the suspension of the sentence and bail. Apart from this, on record it made clear that though the case has been registered in the year 1999 in Crime No.962 of 1991 and the case has been taken up in S.C.No.139 of 2004, but, it was disposed only on 03.08.2016 by convicting these petitioners/appellants. For the main delay due to the non co-operation of PW1, who was also a member of a political party and PW2, who was said to be another eye witness, was in abroad in connection with his employment and for the past 12 years, these petitioners/appellants were put to suffer, but finally they were convicted for the alleged offence. However, it has taken note that all along during the pending of the trial, the petitioners were on bail and they did not jump out on bail. By considering all these aspects, we are inclined to grant the suspension of sentence and appeal bail to the petitioners till the disposal of this appeal.

14. In view of the foregoing discussions it is ordered as under:

(i) Appeal bail is granted till the disposal of these appeals;

(ii) Substantive Sentence of imprisonment imposed by the trial Court alone is suspended;

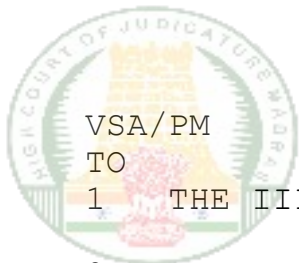
(iii) There shall be two sureties and the petitioners shall execute a bond to the satisfaction of the trial court i.e., the learned III Additional Sessions Judge/PCR Court, Madurai;

(iv) The petitioners shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

sd/-
18/05/2017

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



VSA/PM
TO

1 THE III ADDITIONAL SESSIONS JUDGE/PCR COURT, MADURAI.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
MELUR, MADURAI DISTRICT.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
MELUR POLICE STATION, MADURAI DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.

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

+1. C.C. to M/S. SMA. JINNAH Advocate SR.No.22027
+2CC TO R.MANICKARAJ Advocate sr.No.22028, 22340

MS/PM/PN/SAR.3/02.06.2017/7P-9C

ORDER

IN

CRL MP(MD) No.4036 AND 4187
TO 4189 of 2017

IN

CRL A(MD) No.297 & 328 of 2016
Date :18/05/2017