

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fifteenth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.10063 of 2017

IN CRL RC.1064/2017

BOOMINATHAN,

[PETITIONER/ACCUSED]

Vs

1 NALLASIVAM (DIED),
S/O.SHANMUGASUNDARAM,
NO.1/136, POST OFFICE ROAD,
CHENNAI-96.

[RESPONDENTS]

2 STATE REP. BY
THE SUB-INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,
CRIME NO.102/2005.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC. No.1064 OF 2017 on the file of the High Court, the High Court will be pleased to suspension of sentence, confirmed by Principal and District Sessions Judge, Thiruvallur in C.A.35/2015 dt 05.07.2017, dismissing the appeal and confirming the order of Judicial Magistrate No.I, Poonamallee, in C.C.No.233/2006, dt 27.03.2015 and enlarge me on bail, till the disposal of the CRL.RC.1064/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.1064 of 2017 on the file of the High Court and upon hearing the arguments of MR.GOPALA KRISHNA LAKSHMANA RAJA, SENIOR COUNSEL FOR M/S.R.RADHA PANDIAN, Advocate for the petitioner and of Mr.G.RAMAR, Government Advocate (Crl.Side) for the 2nd Respondent the court made the following order:-

Mr.G.Ramar, learned Government Advocate takes notice on behalf of R2.

The petitioners herein arrayed as A3 was convicted and sentenced by the Judgment of the learned Judicial Magistrate No.I, Poonamallee in C.C.No.233 of 2006, dated 27.03.2015 as follows :

Rank of the Accused	Conviction	Sentence imposed
A3	465 r/w 120 B IPC	accused to undergo one year RI and to pay a fine of Rs.1,000/- in default, to undergo one month S.I.
	468 r/w 471 IPC	accused to undergo one month S.I. and to pay a fine of Rs.1,000/- in default, to undergo one month S.I.
	420 r/w 34 IPC	Accused to undergo two months S.I. and to pay a fine of Rs.3,000/- in default, to undergo two months S.I.

The conviction and sentence imposed by trial Court was confirmed by learned District cum Sessions Judge, Thiruvallur under judgment in C.A.No.34 of 2015 dated 05.07.2017. Hence, petitioner seeks suspension of sentence.

2. Learned Senior counsel for the petitioner submits that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's surrender or being in confinement in availing the relief of suspension of sentence under Section 397 Cr.P.C. in exercise of revisional powers by this Court. The decisions of the Honourable Apex Court in **BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cri) 1380)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3. The learned counsel for the defacto complainant would submit that the petitioner is not having a permanent address and he strongly opposed for granting bail.

4. The learned Government Advocate would strongly object for granting suspension of sentence.

5. The above decisions have been relied upon time and again by this Court towards reaching the conclusion that in moving a revision against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

6. Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the revision as contended by learned counsel for petitioner and further the revision is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner shall execute a bond in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Poonamallee and on further condition that the petitioner shall produce the Adhar Card and also the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

8. On production of the Adhar Card, the learned Magistrate No.I, Poonamallee is directed to release the petitioner.

-sd/-
15/02/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, POONAMALLEE.

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUVALLUR. [FOR INFORMATION]

3 THE PRINCIPAL AND DISTRICT
SESSIONS JUDGE, THIRUVALLUR.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUB-INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,

+1 C.C. to M/S.R.RADHA PANDIAN Advocate on payment of necessary charges-Sr.3220

Order

in
CRL MP.10063/2017

in
CRL RC.1064/2017

Date :15/02/2018

From 7.2.2001 the Registry is issuing certified
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ths : 15.02.2018