

## Bail Slip

Crl.M.P.No.10656/2017 in Crl RC No.1124 of 2017 :

The Petitioner namely Murugesan, aged 54 years, S/o.Palanisamy is directed to be released on Bail as per Order of this Hon'ble Court dated 11.01.2018 made in Crl.M.P.No.10656 of 2017 in Crl RC No.1124 of 2017.

Crl.M.P.No.10319/2017 in Crl RC No.1095 of 2017 :

The Petitioner namely A.Jegan, aged 36 years S/o.Anthony Xaviour is directed to be released on Bail as per order dated 19.09.2018 made in Crl.M.P.No.10319 of 2017 in Crl RC No.1095/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1095 & 1124 of 2017 and  
Crl.M.P.No.3438 of 2019

A.Jegan ...Petitioner in Crl.R.C.No.1095/2017

Murugesan .... Petitioner in Crl.R.C.No.1124/2017

-Vs-

Union of India Represented by  
The Sub Inspector of  
Railway Protection Force,  
ICF Shell, Chennai - 600 038.

...Respondent in both the RCs

Prayer in both the RCs: These Criminal Revision cases are filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment of conviction dated 07.06.2017 passed in C.A.No.137 & 138 of 2012 respectively, by the learned IV Additional Sessions Judge, Chennai, confirming the judgment of conviction dated 16.06.2012 in C.C.No.5793 of 2003 by the learned VI Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.A.Edwin Prabhakar in both the Rcs

For Respondent : Mr.R.Ravichandran

Government Advocate in both the RCs

O R D E R

Originally case was registered against six accused, since A1, A2 and A4 are found to be juveniles, case was split up against them and trial in C.C.No.5793 of 2003 was conducted against A3, A5 and A6. The learned VI Metropolitan Magistrate, Chennai, after trial, found A3 not guilty of offence charged against him and by judgment dated 16.06.2012 acquitted A3 and convicted A5 and A6. Against the said judgment of conviction, A5 and A6 had filed separate appeals in C.A.No.137 and 138 of 2012 before the learned IV Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court, after hearing both the counsel, and after appreciating evidence on record, by judgment dated 07.06.2017, dismissed both the appeals and confirmed the conviction made by the trial Court. Aggrieved against the same, both A5 and A6 have filed these two separate revisions before this Court.

2 According to learned counsel for the petitioner in CrI.R.C.No.1095/2017, the petitioner has been arrayed as A5. Recovery of alleged railway properties from the premises of A5 has not been proved in accordance with law and there is contradictions from the evidence of mahazar witness and recovery witness. Accusation of A5 has been made solely based on the confession made by the juvenile accused, who are tried separately, which is improper. Except the confession statement of juvenile, there is no other evidence to rope the petitioner/A5 in this case. Even though it was stated that there were many independent witnesses available at the time of alleged recovery, no independent witness was examined by the prosecution. Further more, A3, who was charged with same set of evidence, had been acquitted by the trial Court, since the charges levelled against him has not been proved by the prosecution. Therefore, the same benefit should have been extended to the petitioner/A5 also. Both the Courts below had failed to consider the above points and erroneously convicted the petitioner, which warrants interference.

3 The learned counsel appearing for the petitioner in CrI.R.C.No.1124/2019 would submit that the petitioner has been arrayed as A6 and the learned counsel has reiterated the submissions made on behalf of A5. Further he would submit that when the recovery itself is not proved beyond reasonable doubt, then the conviction made by the trial Court is baseless. Further P.Ws.13 and 14 have not supported the case of the prosecution

against A6. Therefore, theft of railway properties has not been clearly proved by the prosecution.

4 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the accused in both the revisions had been convicted for the offence under Section 3 (a) of the Railway Property (Unlawful Possession) Act and the trial Judge, after elaborate trial, had rightly convicted the petitioners/A5 & A6 and the lower appellate Court also by re-appreciating entire evidence on record, had confirmed the conviction made by the trial Court. Even though, some of the witnesses had given contrary statement, but had supported the case of the prosecution to some extent. Trial Court as well as the lower appellate Court had concurrently held that the petitioners/A5 and A6 were found guilty of offence and convicted them for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the petitioners were charged for the offence punishable under Section 3(a) of the Railway Properties (Unlawful Possession) Act. It is contended by both the learned counsel that there are contradictions between the evidence of prosecution witnesses. On reading of evidences of P.W.6 and P.W.8, it clearly reveal that search was made in the premises of of the petitioners and recovery was effected. Even though, properties were not clearly identified, but, they have clearly stated that search was made and material objects were recovered and there is no contradiction in that regard. Under these circumstances, the accused must prove that they were not in unlawful possession of the railway properties. On reading of the entire records, it reveal that search was conducted and recovery was effected, which was proved through the witnesses of prosecution. This Court does not find any perversity in the concurrent judgment of conviction made by both the Courts below. This Court cannot interfere with the decision of the Courts below, when the same are well founded and reasonable.

7 In the result, conviction made by both the Courts below is hereby confirmed. However, in order to meet ends of justice, the period of imprisonment alone modified from six months to three months for both the accused. The period of imprisonment already undergone by both the accused are ordered to be set of. The trial Court is directed to secure custody of both the accused to undergo remaining period of imprisonment, if any.

8 These criminal revision cases are partly allowed with the above modification. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1. The IV Additional Sessions Judge, Chennai.
2. The VI Metropolitan Magistrate, Egmore, Chennai.
3. The Public Prosecutor, High Court of Madras.
4. The Sub Inspector of Railway Protection Force,  
ICF Shell, Chennai - 600 038.
5. The Chief Metropolitan Magistrate, Egmore.
6. The Section Officer, Criminal Section,  
High Court, Madras

+1cc to Mr.A.Edwin Prabhakar, Advocate SR.No.34149

+1cc to Mr.R.Ravichandran, Advocate SR.No.34201

Crl.R.C.No.1095 & 1124 of 2017 and  
Crl.M.P.No.3438 of 2019

NMI (CO)  
GMY (03/09/2019)

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