

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Sixth day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION Nos.17276, 17279 & 17281 of 2019

IN CRL.A.NOS.593, 597 & 595 of 2019

KUMAR @ JAYAKUMAR

[PETITIONER IN CRL.M.P.NO.17276/2019 IN
CRL.A.NO.593/2019]

ASHOK

[PETITIONER IN CRL.M.P.NO.17279/2019 IN
CRL.A.NO.597/2019]

1 MUNIYANDI @ RAMESH
2 SENTHURNATHAN

[PETITIONER IN CRL.M.P.NO.17281/2019 IN
CRL.A.NO.595/2019]

Vs

STATE BY
THE INSPECTOR OF POLICE,
K.V.KUPPAM POLICE STATION,
VELLORE DISTRICT.
(CRIME NO.105/2008).

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed against the petitioner in S.C.No.141/2013, on the file of the Learned 1st Additional District and Sessions Judge, Vellore, Vellore District dated 27.08.2019 and enlarge the petitioner on bail pending disposal of Crl.A.Nos.593 & 595 of 2019. (CRL.M.P.NOS.17276 & 17281/2019)

(i) To suspend the sentence imposed against the petitioner in S.C.No.125/2019, on the file of the Learned 1st Additional District and Sessions Judge, Vellore, Vellore District dated 27.08.2019 and enlarge the petitioner on bail pending disposal of Crl.A.597 of 2019. (CRL.M.P.NO.17279/2019)

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.E.KANNADASAN, Advocate for the petitioners, [IN BOTH THE PETITIONS] and of MR. K.PRABAKAR, Additional Public Prosecutor, on behalf of the Respondents [IN BOTH THE PETITIONS] the court made the following order:-

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

The petitioners in the above petitions have been arrayed as A8, A6, A3 and A5 respectively in S.C.No.141 of 2013 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District. The case was split up against A6 and A7 and tried in S.C.No.125 of 2019 by the same Court.

2.Crl.M.P.No.17276 of 2019 in Crl.A.No.593 of 2019 has been filed by A8 and he has been convicted for the offence punishable under Section 120B IPC and sentenced to undergo two years rigorous imprisonment. Crl.M.P.No.17279 of 2019 in Crl.A.No.597 of 2019 has been filed by A6 and he has been convicted for the offence punishable under Sections 364, 302 and 201 IPC and for the offence punishable under Section 364 IPC, sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo two months rigorous imprisonment, for the offence punishable under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment and for the offence punishable under Section 201 IPC, sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment. Crl.M.P.No.17281 of 2019 in Crl.A.No.595 of 2019 has been filed by A3 and A5 who have been convicted for the offence punishable under Sections 120 B, 364, 302 and 201 IPC and for the offence punishable under Section 120B IPC, sentenced to undergo two years rigorous imprisonment, for the offence punishable under Section 364 IPC, sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.3,000/- each, in default, to undergo two months rigorous imprisonment and for the offence punishable under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo three months rigorous imprisonment and for the offence punishable under Section 201 IPC, sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo one month rigorous imprisonment.

3.We wish to go into the merits of the case as A8 who filed Crl.M.P.No.17276 of 2019 in Crl.A.No.593 of 2019 has been convicted only for a period of two years as against others. The overt acts are similar to A7 in whose favour we have granted suspension of sentence in Crl.M.P.No.16983 of 2019 in Crl.A.No.629 of 2019 on 21.11.2019. Following is the operative portion of the order passed:

2. The case of the prosecution is that A1 and the deceased was having money dispute. The deceased gave complaint against A1 which has been registered. In pursuant to the said complaint thereon, A1 took all the other accused including the petitioner and committed the offence by pressing the face of the deceased on the sand. The overt act attributed against the petitioner is that he caught over the hands of the deceased.

3. The learned counsel appearing for the petitioner submitted that this is a case of circumstantial evidence. The last seen theory has been put forth by PW4 and PW5. Though they have stated to have given confession statement of 05.04.2008, the same has reached the court only on 23.08.2008. The Investigating Officer, in his evidence has set out that he is not able to recollect anything. Once these two witnesses are not rendered by the Trial Court, these two witnesses are held to be not reliable. Thus, the very case of the prosecution would fall to the ground. Therefore, notwithstanding the fact that this is the second application, the suspension of sentence will have to be granted to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State submitted that this is a circumstantial evidence which is followed by recovery. The witnesses speak about the recovery made. This is the second application filed. The trial Court, considered the materials available and rendered the conviction. Thus, this petition will have to be dismissed.

5. We do find arguable points available in the appeal. PW4 and PW5 are witnesses who spoke about the last seen theory. We are of the view that this is a case of circumstantial evidence. From the evidence of investigating officer, we can see that statement have been recorded under Section 167 Cr.P.C. from PW4 and PW5 on 05.04.2008. We do not dispute the fact that they reached the Court on 23.08.2008. However, they were merely evaded to answer the reason for such delay. The petitioner has been under incarceration during trial, and till now. Thus, considering the overt act attributed against the petitioner as well as the charges levelled against him, we are of the view that the petitioner is entitled for suspension of sentence as he has been under incarceration for quite number of years.

6. Considering the above, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the I Additional District and Sessions Judge, Vellore, Vellore District and on further condition that the petitioner shall report before the concerned Court

on the first working day of every month at 10.30 a.m.
pending appeal.

4. In the light of the above, there shall be a similar order in these cases also. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of Judicial Magistrate, Katpadi and on further condition that the petitioners shall appear before the Court concerned on the first working day of every month at 10.30 a.m., pending appeals.

-sd/-
26/11/2019

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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
VELLORE, VELLORE DISTRICT.

2 THE JUDICIAL MAGISTRATE,
KATPADI.

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
K.V.KUPPAM POLICE STATION,
VELLORE DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+3 C.C. to M/S. E.KANNADASAN Advocate on payment of necessary charges SR.NO.24359, 24360, 24361

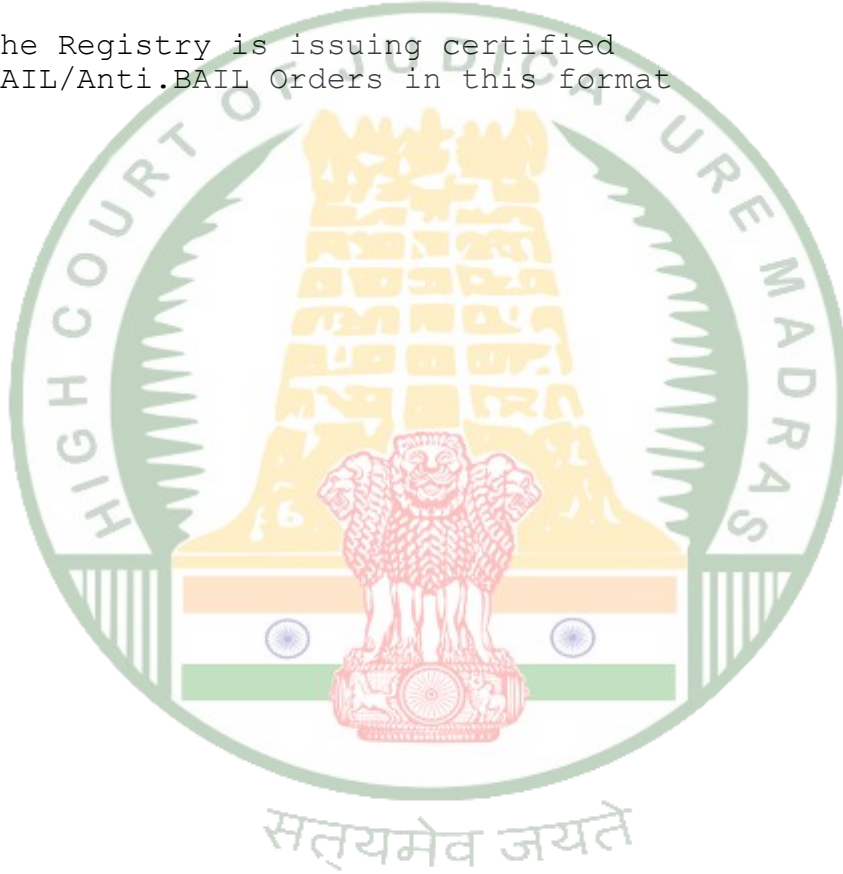
Order

in
CRL MP Nos. 17276, 17279 and 17281 of 2019
in
Crl.A.Nos.593, 597 and 595 of 2019

Date :26/11/2019

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TA-27/11/2019



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