



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

Thursday, the Thirteenth day of June Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP (MD) No.5077 of 2019
IN
CRL A (MD) No.452 of 2018

SUNDARRAJ

... PETITIONER/APPELLANT

Vs

STATE REP.BY,
THE INSPECTOR OF POLICE,
GANESH NAGAR POLICE STATION,
PUDUKKOTTAI.
CRIME NO.9/2011
ARIMZAHAM (VALLATHIRAKOTTAI)
POLICE STATION.)

... RESPONDENT/RESPONDENT

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 Imprisonment imposed by the Learned Principal District and Sessions Judge, Pudukkottai in S.C.No.93/2011 by the Judgement dated 26/09/2018 and enlarge the Petitioner/Appellant on bail pending disposal of the above Crl.A

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.AR.L.SUNDARESAN Senior counsel for M/S.AL.GANTHIMATHI, Advocate for the petitioner and of MR.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of this Court was made by **M.SATHYANARAYANAN, J**)

The petitioner/appellant is arrayed as A5 in S.C.No.93 of 2011 on the file of the Court of Principal Sessions Judge, Pudukkottai and he was tried along with A1 to A4. The trial Court has framed the following charges against the accused.

A2 to A5	120 (b) I.P.C.
A2 and A4	302 (2 counts) I.P.C.
A3 and A5	302 r/w 34 I.P.C.
A2 and A4	201 I.P.C.
A5	201 r/w 34 I.P.C.



The trial Court under the impugned judgment dated 26.09.2018 has found him not guilty for the offence under Section 201 r/w 34 I.P.C. and having found him guilty for the commission of offence under Sections 120(b) and 302 r/w 34 I.P.C., sentenced him to undergo life imprisonment for the commission of offence under Section 120(b) I.P.C. and also sentenced to undergo life imprisonment for the commission of offence under Section 302 r/w 34 I.P.C. (2 counts). The petitioner, challenging the legality of the said conviction and sentence, preferred the present appeal and pending appeal, filed the present petition seeking suspension of the substantive sentence of imprisonment.

2.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner would submit that despite it is the case of the prosecution that A5 was also present in the scene of crime by following A1 and A4 in the motor-cycle, the trial Court acquitted the petitioner for the commission of offence under Section 201 r/w 34 I.P.C. and no appeal has been preferred against it. So far as conspiracy is concerned, P.W.6 was examined and he turned hostile in toto and even in cross-examination nothing useful was elicited in their favour. As regards the presence of the petitioner in the scene of the occurrence P.W.8 has been examined and he has also turned hostile and though he was exhaustively examined in the cross-examination, nothing has been elicited. It is the case of the prosecution that the petitioner/A5 has given extra-judicial confession before P.W.10 and according to him on 04.02.2011 at about 11.00 a.m. when he was present along with his menial, the petitioner/A5 gave extra-judicial confession admitting guilt. Therefore, he has recorded his statement Ex.P.2 and he has taken the petitioner to Ganesh Nagar Police Station and handed over him to the Inspector of Police along with his report Ex.P.3. The learned Senior Counsel would further submit that during the cross-examination, though he was cross-examined on the same day of chief-examination, P.W.10 had deposed that Ex.P.2 has not been written by him and he also denied his handwriting in Ex.P.3. Therefore, it is the submission of the learned Senior Counsel appearing for the petitioner that except the extra-judicial confession, no incriminating materials/ evidence have been produced by the prosecution and even for the sake of argument it is proved that the petitioner/A5 has given extra-judicial confession to P.W.10, citing the settled position of law that Extra-Judicial Confession is a weak piece of evidence unless it is corroborated by material particulars through credible evidence, the learned Senior Counsel would submit that the petitioner/A5 cannot be found guilty only on the basis of the extra-judicial confession and since the petitioner is having a bright chance of success in this appeal, prays for suspension of the substantive sentences of imprisonment.

3.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved the motive as well as the role of the petitioner/A5



through the testimonies of witnesses and the points urged by the learned Senior Counsel appearing for the petitioner can be appreciated only at the time of final disposal and hence, prays for dismissal of this petition.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

5. Even according to the prosecution, the petitioner/A5 has not been attributed with any fatal overt act and he has been roped in for the commission of conspiracy as well as common intention under Section 34 I.P.C. P.W.6 was examined to conspiracy and as pointed out by the learned Senior Counsel for the petitioner, he turned hostile in toto and in the cross-examination done by the prosecution, nothing useful was elicited in their favour. Insofar as the presence of the petitioner/A5 in the scene of occurrence P.W.8 was examined and he has also turned hostile and the cross-examination did not yield any desired results. Therefore, the only evidence available against the petitioner/A5 is extra-judicial confession said to have been given by the petitioner/A5 to P.W.10 and P.W.10 in the cross-examination done on the same day has denied that he did not write the contents of Ex.P.3, so also Ex.P.2 and even for the sake of arguments the extra-judicial confession is believable, the prosecution has failed to produce any corroborating materials through independent sources in support of the said extra-judicial confession. It is brought to the notice of this Court pending trial the petitioner/A5 was on bail and apart from the present case, he does not have any antecedent also. In the light of the above facts and circumstances, this Court is of the view that the petitioner/appellant is entitled for suspension of the substantive sentence of imprisonment pending this appeal.

6. In the result, the petition is ordered and the substantive sentence of imprisonment alone in respect of the petitioner/A5 is suspended and the petitioner/A5 is directed to be enlarged on bail on condition that the petitioner/A5 shall execute 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 learned District Munsif-cum-Judicial Magistrate, Thirumayan and on further condition that the petitioner/A5 shall appear before the Committal Court, viz., the Court of District Munsif-cum-Judicial Magistrate, Thirumayan [PRC.No.7/2011] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-
13/06/2019

/ TRUE COPY /



TO

1. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI

2. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
THIRUMAYAM

3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI

4. THE INSPECTOR OF POLICE,
GANESH NAGAR POLICE STATION,
PUDUKKOTTAI,
(ARIMZAHAM (VALLATHIRAKOTTAI)
POLICE STATION.)

5. THE SUPERINTENDENT ,
CENTRAL PRISON, TIRUCHIRAPPALLI

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

+1. C.C. to M/S.AL.GANTHIMATHI Advocate SR.No.9633

ORDER
IN
CRL MP (MD) No.5077 of 2019
IN
CRL A (MD) No.452 of 2018
Date :13/06/2019

SJ

PK/PN/SAR-3/14.06.2019 : 4P/8C