



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

Thursday, the Twenty Seventh day of June Two Thousand Nineteen
PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN

and

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.5389 of 2019

IN

CRL A(MD) No.50 of 2019

1 MUTHUMARIYAPPAN @ IMMANUVEL

2 SATHIYARAJ @ ANTONY

... PETITIONERS/APELLANTS

Vs

STATE REPRESENTED BY

THE INSPECTOR OF POLICE

THOOTHUKUDI SOUTH POLICE STATION,

THOOTHUKUDI, THOOTHUKUDI DISTRICT.

(CRIME NO.69/2014)

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioners on bail by suspending the sentence imposed upon us in SC.No.235 of 2016 on the file of the learned II Additional District Sessions Judge, Thoothukudi District, dated 25.01.2019 pending disposal of the main criminal appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.A.THIRUVADI KUMAR, 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 petitioners herein are arrayed as A.2 and A.3 in S.C.No.235 of 2016, on the file of the Court of II Additional District Sessions Judge, Tuticorin and vide impugned judgment dated 25.01.2019, they were convicted and sentenced as follows:

Rank of the Accused	Conviction u/s	Sentence awarded
A.2 and A.3	302 r/w 34 I.P.C.	To undergo one life imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for six months.
A.2 and A.3	120(b) I.P.C.	To undergo 2 years simple imprisonment



The sentences of imprisonment were ordered to be run concurrently. The trial Court has also granted set-off under Section- 428 Cr.P.C. Challenging the legality of the said conviction and sentence, the petitioners/A.2, A.3 have preferred the present appeal and pending the appeal, they had filed this petition seeking suspension of the substantive sentences of imprisonment.

2. Mr.A.Thiruvadi Kumar, learned Counsel appearing for the petitioners/A.2 and A.3 would submit that the only eye-witness supporting the case of the prosecution is P.W.12 and he has spoken only about the overt act on the part of A.1 and he did not identify the two persons, who were present at the time of commission of offence and the other witnesses examined to prove the conspiracy were P.W.4 and P.W.5 and they did not identify them in the Court and since the case projected by the prosecution against them brassily has very many inconsistencies and infirmities, there is a very bright chance of success in the appeal and hence, prays for suspension of the substantive sentences of imprisonment.

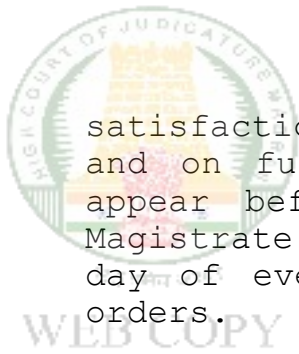
3. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the trial Court, on thorough consideration and appreciation of evidences and materials placed before the Court, has rightly reached the conclusion to convict and sentence the petitioners/A.2 and A.3 and that, the points urged by the learned Counsel appearing for the petitioner would require appreciation and adjudication and the same can be done at the time of final hearing for the appeal and hence, prays for dismissal of this petition.

4. This Court has carefully considered the rival submission and perused the materials placed before this Court.

5. Even according to the prosecution, except P.W.12, there were no eye-witness supporting the case of the prosecution and he did not speak about the over act against the petitioners/A.2 and A.3 and he would state that two persons were present and he did not specifically identify them. P.W.4 and P.W.5, who were the witnesses to the conspiracy, did not identify the petitioners/A.2 and A.3 or the tendered any evidence in that regard.

6. This Court, taking into consideration of the above facts and circumstances, is of the considered view that the petitioners / A.2 and A.3 are entitled for suspension of the substantive sentences of imprisonment pending these appeal.

7. In the result, the petition is allowed and the substantive sentences of imprisonment alone in respect of the petitioners/A.2 and A.3 are suspended and the petitioners/A.2 and A.3 are directed to be enlarged on bail on condition that each of the petitioners/A.2 and A.3 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 Judicial Magistrate No.I, Thoothukudi and on further condition that the petitioners/A.2 and A.3 shall appear before the Committal Court, viz., the Court of Judicial Magistrate No.I, Thoothukudi [PRC.No.59/2014] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-
27/06/2019

/ TRUE COPY /

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

TO

- 1 THE II ADDITIONAL DISTRICT SESSIONS JUDGE,
THOOTHUKUDI, THOOTHUKUDI DISTRICT.
- 2 THE JUDICIAL MAGISTRATE NO.I,
THOOTHUKUDI.
- 3 DO THRO'THE CHIEF JUDICAIL MAGISTRATE,
THOOTHUKUDI DISTRICT.
- 4 THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI, THOOTHUKUDI DISTRICT,
- 5 THE SUPERINDENTENT ,
CENTRAL PRISON, PALAYAMKOTTAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to MR.A.THIRUVADIKUMAR, Advocate (SR-10583[I] dated
27/06/2019)

ORDER
IN
CRL MP(MD) No.5389 of 2019
IN
CRL A(MD) No.50 of 2019
Date :27/06/2019

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