



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

Thursday, the Eighteenth day of July Two Thousand Nineteen
PRESENT

**The Hon`ble Mr.Justice M.SATHYANARAYANAN
and**

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) Nos.5447 & 6007 of 2019

IN

CRL A(MD) Nos.526 of 2018 & 144 of 2019

ANITHA @ RATHIKA

... PETITIONER/APPELLANT/ACCUSED NO.3
IN CRL MP(MD).NO.5447 of 2019
in CRL A(MD).NO.526 of 2018

ESAKKI PANDI

... PETITIONER/APPELLANT/ACCUSED NO.1
IN CRL MP(MD).NO.6007 of 2019
in CRL A(MD).NO.144 of 2019

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
PERUMALPURAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.393/2010

... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

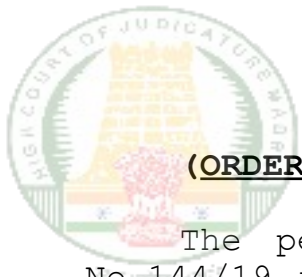
PRAYER IN IN CRL MP(MD).5447 of 2019 in CRL A(MD).NO.526 of 2018:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the execution of sentence by granting bail in S.C.No.397/2015 dated 29.06.2018 on the file of the IIIrd Additional Sessions Judge, Tirunelveli, Tirunelveli District and till the disposal of the Criminal Appeal.

Prayer in CRL MP(MD). 6007/ 2019 in CRL A(MD).NO.144 of 2019:

To suspend the Execution of sentence by granting bail in S.C.No.397 of 2015, dated 29.06.2018 on the file of the III Additional District and Sessions Judge, Tirunelveli, Tirunelveli District till the disposal of the Criminal Appeal.

Order : These petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, Senior Counsel for M/S.K.PRABHU, Advocate for the petitioner in both petitions and of MR.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent in both petitions, the court made the following order:-



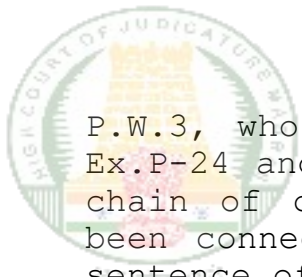
(ORDER OF THE COURT WAS MADE BY M.SATHYANARAYANAN, J.)

The petitioner in Crl. M.P. (MD) No.6007/19 in Crl.A. (MD) No.144/19 is A-1 and the petitioner in Crl. M.P. (MD) No.5447/19 in Crl.A. (MD) No.526/18 is A-3, who is the wife of A-1. These two accused, along with two others were prosecuted for the commission of the offences u/s 120 (b), 302, 392, 201 and 414 IPC in S.C. No.397/15 on the file of the III Addl. Sessions Court, Tirunelveli. The trial court, vide the impugned judgment dated 29.6.19, while acquitted A-4, convicted and sentenced A-1 to A-3 as under :-

Accused	Section of Offence	Sentence
A-1, A-2 & A-3	U/s 120 (b) IPC	Convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a period of six months.
	U/s 302 IPC	Convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a period of six months.
	U/s 392 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a period of six months.
	U/s 201 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a period of six months.

2. The substantive sentence of imprisonment were directed to run concurrently and set off was also granted by the trial court under Section 428 Cr.P.C. Challenging the legality of the said conviction and sentence, the present appeals have been filed by the petitioners/appellants and pending disposal of the appeals, have prayed for suspension of the substantive sentence of imprisonment.

3. Mr.V.Kathirvelu, learned senior counsel, assisted by Ms.Ragaventhre, learned counsel, has drawn the attention of this Court to the impugned judgment and submitted that the prosecution has projected the case as murder for gain and admittedly, the case rests upon circumstantial evidence and except the testimony of



P.W.3, who also turned hostile, and the extra-judicial confession, Ex.P-24 and the alleged recovery at the instance of A-1, the other chain of circumstances, as projected by the prosecution have not been connected and, therefore, prays for suspension of substantive sentence of imprisonment imposed on A-1 and A-3.

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4. Per contra, Mr.Chandrasekar, learned Addl. Public Prosecutor appearing for the State submits that A-1 and A-3 are husband and wife and A-3 is the friend of A-1 and A-4 is the mother of A-1. Though the trial court has acquitted A-4, the other circumstances projected by the prosecution have amply been proved through the testimonies of the witnesses, exhibits and material documents and the prosecution had established all the links in the chain of circumstances. Further, it is submitted by the learned Addl. Public Prosecutor that the points urged by the learned senior counsel appearing for the petitioners/appellants can be considered only at the time of final disposal of the appeals and since it is a case of murder for gain, strongly opposed these petitions and prays for dismissal of the petitions.

5. This Court gave its careful consideration to the submissions on either side and also perused the materials available on record.

6. A perusal of the impugned judgment disclose that though the prosecution has built the case upon the extra-judicial confession said to have been given by A-1 to P.W.3, the fact remains that pursuant to the confession of A-1, incriminating articles such as rug and jewels were recovered. Though extra-judicial confession is a weak piece of evidence, the fact remains that the confession also led to the recovery of incriminating articles and also the recovery of the body and, therefore, this Court is not inclined to consider the prayer for suspension of substantive sentence of imprisonment insofar as A-1 is concerned. Accordingly, in the light of the facts and circumstances as pointed out above CrI. M.P. (MD) No.6007 of 2019 in CrI.A. (MD) No.144 of 2019 is dismissed.

7. Insofar as A-3 is concerned, she is the wife of A-1 and pursuant to the confession, recovery of M.O.9 - in-skirt and plastic bag alone have been effected and further A-3 has been under incarceration for nearly 373 days, between 4.9.10 and 12.9.11 and taking into consideration of the evidence let in, insofar as A-3 is concerned, this Court is of the considered view that A-3 is entitled for grant of suspension of sentence.

8. In the facts and circumstances pointed out above, this Court is inclined to suspend the substantive sentence of imprisonment imposed on the petitioner/appellant in CrI. M.P. (MD) No.5447 of 2019 in CrI.A. (MD) No.526 of 2018. Accordingly, CrI. M.P. (MD) No.5447 of 2019 in CrI.A. (MD) No.526 of 2018 is allowed and the petitioner/appellant is directed to be released on bail on her executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) along with two sureties, each for a likesum, to the



satisfaction of Judicial Magistrate No.I, Tirunelveli, and on further condition that the petitioner/appellant shall appear before the Court of Judicial Magistrate No.I, Tirunelveli, at 10.30 a.m., on the first working day of every English calendar month until further orders.

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sd/-
18/07/2019

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

TO

1.THE III ADDITIONAL SESSIONS JUDGE, TIRUNELVELI

2.THE JUDICIAL MAGISTRATE NO.I, TIRUNELVELI.

3.DO THRO'THE CHIEF JUDICAIL MAGISTRATE,
TIRUNELVELI DISTRICT.

4.THE INSPECTOR OF POLICE
PERUMALPURAM POLICE STATION,
TIRUNELVELI DISTRICT.

5. THE OFFICER INCHARG,
SPECIAL PRISON FOR WOMEN, TRICHY.

6 THE SUPERINDENTENT,
CENTRAL PRISON, TRICHY.

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

+2 CC to M/s.K.PRABHU, Advocate (SR-11933,11927[I] dated 18/07/2019
)

ORDER
IN
CRL MP(MD) Nos.5447 & 6007 of 2019
IN
CRL A(MD) Nos.526 of 2018 &
144 of 2019
Date :18/07/2019