



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

Thursday, the Eleventh day of July Two Thousand Nineteen

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PRESENT

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

CRL MP (MD) No.5743 of 2019
IN
CRL A (MD) No.524 of 2018

SIVA @ PALANISAMY

... PETITIONER/
APPELLANT/ ACCUSED -4

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
GANESHNAGAR POLICE STATION,
PUDUKKOTTAI DISTRICT,
(CRIME NO.9/2011, ARIMAZHAM
(VALLATHIRAIKOTTAI) POLICE STATION,
PUDUKKOTTAI DISTRICT

... RESPONDENT/ RESPONDENT/
COMPLAINANT

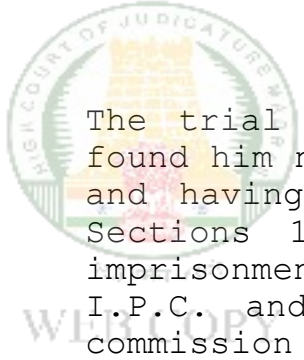
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed in S.C.No.93 of 2011 by the Principal District and Sessions Judge, Pudukkottai dated 26.09.2018 and enlarge the petitioner on bail pending disposal of the main CrI.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.RAVI, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Government Pleader 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 A4 in S.C.No.93 of 2011 on the file of the Court of Principal Sessions Judge, Pudukkottai and he was tried along with A2, A3 and A5. 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.



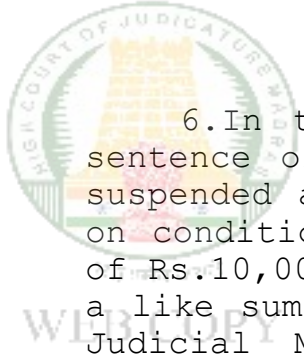
The trial Court under the impugned judgment dated 26.09.2018 has found him not guilty for the offence under Section 201 r/w 34 I.P.C. and having found him guilty for the commission of offence under Sections 120(b) and 302 I.P.C., sentenced him to undergo life imprisonment for the commission of offence under Section 120(b) I.P.C. and also sentenced to undergo life imprisonment for the commission of offence under Section 302 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.S.Ravi, learned counsel appearing for the petitioner would submit that this Court vide order dated 13.06.2019, made in CrI.M.P.No.5077 of 2019 in CrI.A.(MD) No.452 of 2018 granted suspension of the substantive sentence of imprisonment in respect of A4 and in the present case the only eye-witness was P.W.8 and he turned hostile and even in the cross-examination, nothing has been elicited in favour of the petitioner and except arrest, confession and recovery there is no other material available to connect A5 with the crime 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/A4 through the testimonies of witnesses and the points urged by the learned counsel appearing for the petitioner can be appreciated only at the time of final disposal and hence, prays for dismissal of this petition. The learned Additional Public Prosecutor by inviting the attention of this Court to the antecedents of theft cases against the petitioner would further submit that in the event of suspending the substantive sentence of imprisonment, petitioner/A4 may be directed to stay away.

4.This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment and the order of this Court dated 13.06.2019, made in CrI.M.P.No.5077 of 2019 in CrI.A.(MD) No.452 of 2018.

5.Except the testimony of P.W.8, who is stated to be the eyewitness to the occurrence, no other tenable evidence has been produced by the prosecution. Though there is arrest, confession and recovery there is no material available to connect the petitioner/A5 with the crime. The reasons assigned in paragraph 5 of the order dated 13.06.2019, made in CrI.M.P.No.5077 of 2019 in CrI.A.(MD) No.452 of 2018 in respect of A5 is also applicable to this case also. In the light of the above, 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/A4 is suspended and the petitioner/A4 is directed to be enlarged on bail on condition that the petitioner/A4 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, Thirumayam [PRC.No.7/2011] and on further condition that the petitioner/A4 shall stay at Krishnagiri and report before the Inspector of Police, Krishnagiri Town Police Station daily at 10.30 a.m. until further orders.

sd/-
11/07/2019

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

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 DISTRICT.
4. THE INSPECTOR OF POLICE
GANESHNAGAR POLICE STATION, PUDUKKOTTAI DISTRICT.
5. THE INSPECTOR OF POLICE, ARIMAZHAM
(VALLATHIRAIKOTTAI) POLICE STATION, PUDUKKOTTAI DISTRICT.
6. THE INSPECTOR OF POLICE, KRISHNAGIRI TOWN POLICE STATION,
KRISHNAGIRI.
7. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
8. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.S.RAVI Advocate SR.No.11545

ORDER
IN
CRL MP (MD) No.5743 of 2019
IN
CRL A (MD) No.524 of 2018
Date : 11/07/2019