

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No.3965 of 2020
in
Cr1.A.No. 231 of 2020

Dhanraj Alias Dhanarajan Petitioner

vs

State Represented by
The Inspector of Police,
Namakkal Police Station,
Namakkal District.
Cr.No. 387/2010

.... Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence dated 28.02.2020 made in S.C.No. 02 of 2013 by the Principal Sessions Judge, Namakkal.

For Petitioner .. Mr.R.C.Paul Kanagaraaj

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

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

The petitioner has been arrayed as A4 in S.C.No. 02 of 2013 on the file of the Principal Sessions Judge, Namakkal. The trial Court by judgment dated 02.03.2020 convicted the petitioner for the offence punishable under Sections 120(B) IPC, 364 r/w 120(B) IPC, 302 r/w 120(B) IPC, 392 r/w 120(B) IPC, 201 r/w 120(B) IPC. For the offence punishable under Sections (i) 120(B) IPC sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to under four years simple imprisonment, (ii) 364 r/w 120(B) IPC sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to undergo 30 months simple imprisonment, (iii) 302 r/w 120(B) IPC sentenced to undergo life imprisonment and to pay a fine of Rs.5000/-, in default, to undergo four year simple

imprisonment, (iv) 392 r/w 120(B) IPC sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 30 months simple imprisonment and (v) 201 r/w 120(B) IPC sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo nine months imprisonment. Thus, among the other sentences, the life imprisonment was also imposed. The trial Court acquitted A2 and A6 for want of adequate evidence. Challenging the conviction rendered by the trial Court, in which the judgment reserved on 28.02.2020 and pronounced on 02.03.2020, the present petition has been filed. Pending appeal, the petitioner seek suspension of sentence imposed.

2. Learned counsel appearing for the petitioner submitted that it is a case of circumstantial evidence. The link has not been established with any tangible evidence. The very case against this petitioner is that A1 has handed over the purse belonged to the deceased. There is no indication of existence of money nor the usage of credit card kept within the same. There is no evidence to link the petitioner to attract Section 120B IPC. Though the evidence of the co-accused is not a substantive piece of evidence, even the co-accused have not implicated the petitioner, except the statement of A1 that he has given the purse belonging to the deceased in favour of the petitioner. The conviction cannot be based upon the recovery under Section 27 of the Indian Evidence Act alone. The petitioner has been under incarceration for nearly about eight months. The trial Court ought to have acquitted the petitioner as did insofar as A2 and A6 are concerned. Thus, the suspension of sentence will have to be allowed.

3. Learned Additional Public Prosecutor appearing for the State submitted that the very case of the prosecution is that the occurrence took place at the instance of this petitioner. Though he was not present at the time of occurrence, the charge framed under Section 120B IPC has been attracted. The recovery has been made from the custody of the petitioner. Therefore, inasmuch as there exists a discovery of fact, the trial Court correctly rendered conviction and, therefore, the present petition will have to be dismissed.

4. As stated, the case of the prosecution is one of circumstantial evidence. Prima facie, we find that the chain of events are not linked sufficiently to implicate this petitioner. There is no evidence to show that there was a conspiracy prior to the occurrence in which the petitioner has participated. Thus, even assuming statement of A1 that he handed over the purse belonging to the deceased in favour of the petitioner is true, the offence punishable under Section 302 IPC would not get attracted. In that sense, we do find availability of arguable points in this petition. Thus, taking into consideration the above said facts, we are inclined to suspend the sentence. However, we make it clear that our observation and finding which are obviously prima facie can only be applied to the case of the petitioner alone as the overt act against the other accused are totally different.

5. 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 Judicial Magistrate - I, Namakkal and on further condition that the petitioner shall stay at Trichy and report before the Town Police Station, Trichy daily at 10.30 a.m. until further orders.

-sd/-

02/11/2020

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 JUDICIAL MAGISTRATE,
NO.I, NAMAKKAL

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
NAMAKKAL POLICE STATION,
NAMAKKAL DISTRICT,

5 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL

6 THE OFFICER INCHARGE,
TRICHY TOWN POLICE STATION, TRICHY

7 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges

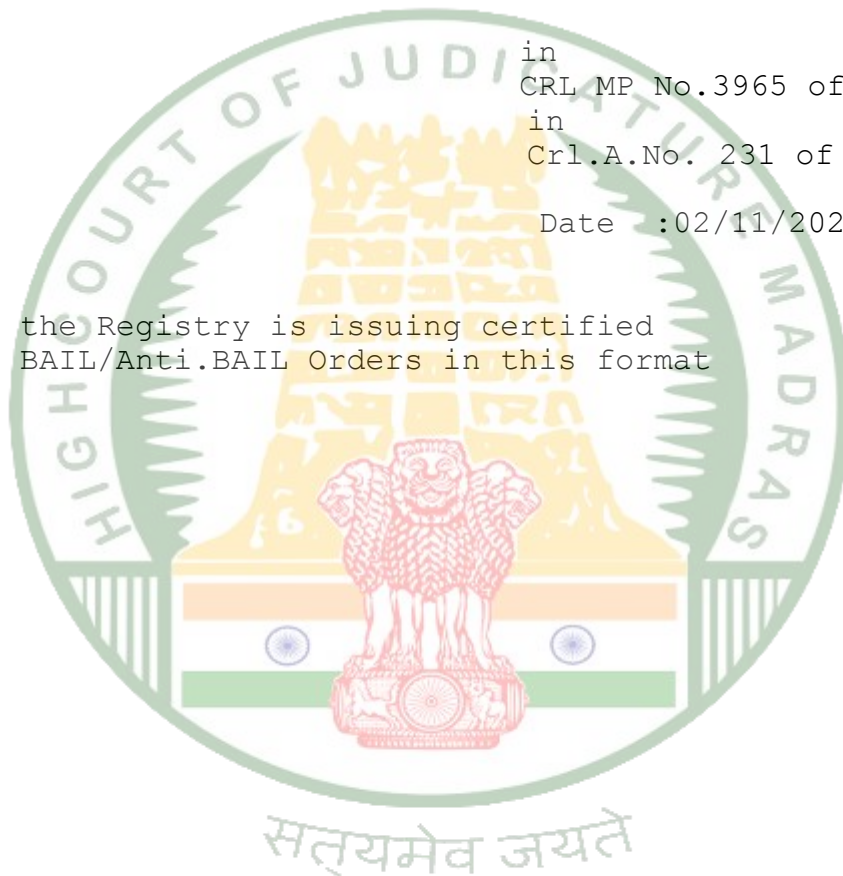
Order

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in
Crl.A.No. 231 of 2020

Date :02/11/2020

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