

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

Crl.M.P. No. 6631 of 2020

in

Crl.A. No. 100 of 2020

Anbuselvan

..Petitioner

Vs.

State through
The Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District
(Crime No. 273 of 2011)

..Respondent

Prayer: Petition filed under Section 389(1) of Cr PC to suspend the sentence of imprisonment imposed in the judgement dated 03.01.2020 made in S.C.No. 95 of 2018 on the file of the Additional District Sessions Court, Krishnagiri District and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner .. Mr.V. Gopinath,
Senior counsel
for Mr.S. Gajapathi Krishnan

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

ORDER

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

The petitioner was arrayed as A1 in S.C.No. 95 of 2018 on the file of Additional District Sessions Judge, Krishnagiri District. The trial Court by judgment dated 03.01.2020 convicted the petitioner for the offence punishable under Section 120B IPC and 302 r/w 34 IPC and for each of the said offence, sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- , in default, to undergo six months simple imprisonment. In so far as other two accused are concerned, they being juveniles, the case was split up and proceedings were initiated separately. On conclusion of the the said proceedings, the juveniles were acquitted. The sentences imposed on the petitioner were directed to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. Learned senior counsel for the petitioners submitted that the occurrence was on 30.07.2011. While the petitioner was stated to be arrested on 03.08.2011, as per the version of the prosecution, P.W.s 1 and 4 would speak about the presence of the petitioner under the custody of the Police even on 31.07.2011. Similarly, the vehicle, which was recovered in pursuance to the confession statement, preceded by the arrest of the petitioner, was stated to have been recovered by P.W.1 and others as per their evidence. Therefore, the very case of the prosecution falls to the ground. There is absolutely no material to show that the thumb impression found on the beer bottle marked as a material object tallied with the fingerprint of the petitioner. There is no evidence to show that the model fingerprint lifted from the petitioner actually belonged to him as nobody speaks about the same. The fingerprint expert also does not speak about the similarities in the two finger prints lifted from the material object and given by the prosecution. Thus, these aspects require to be considered in the appeal apart from the fact that the petitioner has been under incarceration from 03.01.2020 onwards. Hence, the sentence will have to be suspended.

3. Learned Additional Public Prosecutor appearing for the State submitted that the last seen theory has been proved as per the evidence of P.W.1 and others. P.W.8 also speaks about the same. This coupled with the recovery and the evidence of expert would clearly establish the complicity of the petitioner in committing the offence. Therefore, the present petition will have to be dismissed.

5. The case of the prosecution is that the offence was committed by the petitioner along with two juveniles in conflict with law in view of prior motive based upon three instances and they are, the petitioner and the deceased were in love with the same girl, the deceased borrowed money and there was dispute with respect to the sharing of prize money obtained after winning a group match. As rightly submitted by the learned Senior Counsel for the petitioner, there are certainly issues of fact and law involved to be argued in the appeal apart from the fact that the petitioner has been under incarceration for nearly one year. It is true that the petitioner

and the other two juveniles, who were also charged were friends playing in the same team under the captaincy of the deceased. It is a case of circumstantial evidence. The evidence available would show that the petitioner was in police custody on 31.07.2011 contrary to the arrest made on 03.08.2011. This creates a serious doubt on the very recovery said to have been made. Prima facie, the reliance made upon similarity of the fingerprints available on the beer bottle recovered and that of the petitioner is a debatable one. Therefore, considering the above, we are inclined to suspend the sentence.

6. 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 District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri District and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

07/12/2020

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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, POCHAMPALLI,
KRISHNAGIRI DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
NAGARASAMPATTI POLICE STATION,
KRISHNAGIRI DISTRICT.

5 THE ADDITIONAL DISTRICT
SESSIONS COURT, KRISHNAGIRI

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

C.C. to M/S. S.GAJAPATHI KRISHNAN Advocate on payment of
necessary charges Sr.7930

Order

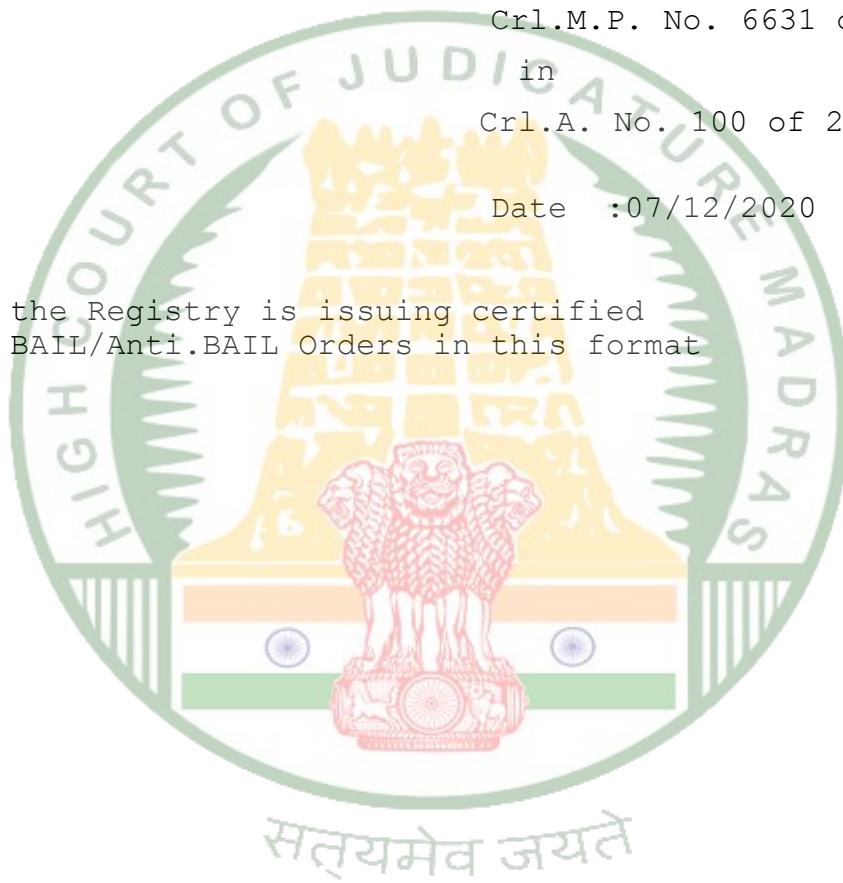
in
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Crl.A. No. 100 of 2020

Date :07/12/2020

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RVR 08/12/2020



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