

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION NO.15845 OF 2019

IN CRL.A.NO.750 OF 2019

JAHIR HUSSAIN

[PETITIONER / APPELLANT / ACCUSED]

Vs

STATE REP.BY

[RESPONDENT]

INSPECTOR OF POLICE,

C-1 FLOWER BAZAAR POLICE STATION,

CHENNAI-600 001.

CRIME NO.1196/2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.750 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of the learned IInd Additional Sessions Judge, made in S.C.No.145 of 2017, dated 07.08.2019 and enlarge the petitioner on bail, pending disposal of the above CRL.A.NO.750 OF 2019 [IN CRL.MP.NO.15845 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.750 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.P.PAUL SELVAM, Advocate for the petitioner and of MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Criminal appeal has been filed by the accused/appellant against the judgment of conviction and sentence passed by the II Additional Sessions Judge, Chennai in S.C.No.145 of 2017 dated 07.08.2019. He also filed a petition in Crl.MP.No.15845 of 2019 to suspend the sentence till the disposal of the appeal.

2. The case of the prosecution is that on 14.10.2016 at about 7.15 a.m., when the defacto complainant was coming through Mint Street, when he reached near K.V.Iyer Shop at Rasappa Street; that the accused hit on his shoulder and abused him with filthy language and demanded money from the defacto complainant by showing a knife and also forcibly took Rs.650/- from the pocket of the defacto complainant; that when the defacto complainant started to shout, the accused threw stones on him and others who came to his rescue and ran away from the occurrence place and hence, the

accused is liable to be punished under Sections 341, 294(b), 332, 427, 397 and 506(ii) IPC.

3. The II Additional Sessions Judge, Chennai by the Judgment dated 07.08.2019 found the accused guilty under Sections 341, 392 r/w 397 and 506(ii) IPC and sentenced him to undergo one month rigorous imprisonment for the offence under Section 341 IPC, 10 years rigorous imprisonment for the offence under Section 392 r/w 397 of IPC and also imposed a fine of Rs.1,000/-, in default, simple imprisonment for one month and five years rigorous imprisonment for the offence under Section 506(ii) IPC. She also ordered that the sentences shall run consecutively, however, she directed to give set off under Section 428 of Cr.P.C., with regard to the period which was already undergone by the accused. She acquitted the accused for the offence under Sections 294(b) and 336 of IPC. Aggrieved by the same, the accused has filed the present appeal.

4. The learned counsel for the appellant/accused has submitted that though it is stated in the FIR that the occurrence took place on 14.10.2016 at about 07.15 A.M., in the Bazaar, no independent witnesses were examined to corroborate the evidence of the defacto complainant/P.W.1. He further submitted that though the P.W.1 has deposed that the accused has forcibly took Rs.650/- from his pocket, but, the Investigating Officer (P.W.4) has deposed that only Rs.150/- was recovered and he has not given any explanation as to non-recovery of balance amount of Rs.500/-. He further submitted that in the arrest memo, there is a specific column (Column No.8) in which, the Police Officer has to mention as to whether any property and weapon are seized, but, in the said column, the Investigating Officer has not mentioned anything. He further submitted that though the Investigating Officer has deposed that he seized the case properties viz., M.O.1 knife and M.O.2 Rs.150/- from the accused under a seizure mahazar in the presence of one Srinivasan and Dhanasekaran, the said witnesses were not examined before the trial court. He further submitted that the accused was not already known to P.W.1 and in such a case, after arrest of the accused, an identification parade should have been conducted but, in this case, no such identification parade has been conducted. He further submitted that there are material contradictions in the evidence of the prosecution witnesses. He further submitted that the accused/appellant is having a chance of success in the appeal and there is no possibility of taking up of the appeal in the near future. He further submitted that the accused is in custody from the date of judgment by the trial court i.e., from 07.08.2019. He further submitted that the appellant has already paid the fine amount before the trial court. Therefore, he prayed to suspend the sentence awarded by the trial court.

5. The respondent has filed a counter opposing a suspension of sentence.

6. The learned Government Advocate (Crl.Side) has submitted that P.W.1 has categorically deposed before the trial court that the accused has committed robbery of Rs.650/- by showing knife. He further submitted that P.W.1 has identified the accused before the Investigating Officer and also before the trial court. He further submitted that there is no motive for PW1 for giving evidence falsely against the accused. He further submitted that the evidence of P.W.1 has been corroborated by the evidence of P.W.3 and P.W.4. He further submitted that the accused is an habitual offender and he was already convicted by the VIII Metropolitan Magistrate, George Town, Chennai in 8 cases for the offences under Sections, 379 and 380 IPC and taking into consideration of the said facts, the trial court has awarded maximum sentence and also ordered that the sentences shall run consecutively and therefore he strongly opposed to suspend the sentence.

7. Taking into consideration of the submissions made by the learned counsel for the appellant/accused that no independent witnesses were examined with regard to the occurrence and also the fact that in the arrest memo, though, there is a specific column, with regard to the seizure of weapon and property, the Investigating Officer has not mentioned the same and also the fact that the prosecution did not examine the persons who have attested the seizure Mahazar as witnesses before the trial court and also the fact that with regard to the previous convictions, no charge has been framed under Section 75 of IPC and also the fact that the appellant is in custody from 07.08.2019, and also the fact that there is no possibility of taking up of the appeal for final hearing in the near future, this court is inclined to suspend the sentence awarded by the trial court and directing the appellant to release on bail with the following conditions:-

(i) The appellant shall execute a bond for a sum of Rs.10,000/- with two sureties for like sum each, and that

(ii) The petitioner shall appear before the trial on the 1st working day of every month until disposal of the Criminal Appeal.

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-sd/-
23/03/2020

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 IIND ADDITIONAL SESSIONS JUDGE,
CITY CIVIL COURT, CHENNAI.

2 THE METROPOLITAN MAGISTRATE,
NO.VIII, GEORGE TOWN, CHENNAI.

3 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
C-1 FLOWER BAZAAR POLICE STATION,
CHENNAI-600 001.

C.C. to M/S.P.PAUL SELVAM Advocate on payment of necessary
charges

Order

in

CRL MP.15845/2019

in

CRL A.750/2019

Date :23/03/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:23/03/2020

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