

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.07.2020

DELIVERED ON: 06.08.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.M.P. No.18160 of 2019 in Crl.A. No.847 of 2019

Dhandapani

Petitioner

vs.

The State represented by
the Inspector of Police
Thiruthuraipoondi Police Station
Thiruvarur District
(Cr. No.67 of 2012)

Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. seeking to suspend the sentence imposed vide judgment and order dated 06.11.2019 in S.C. No.12 of 2016 on the file of the Principal District and Sessions Court, Thiruvarur and enlarge the petitioner on bail, pending disposal of the appeal.

For petitioner : Mr. R. Sankarasubbu

For respondent : Mr. K. Madhan
Government Advocate (Crl. Side)

ORDER

This is a petition seeking suspension of sentence and bail.

2 The petitioner faced trial in S.C. No.12 of 2016 on the file of the Principal District and Sessions Court, Thiruvarur and was convicted and sentenced vide judgment and order dated 06.11.2019 as follows:

<i>Provision under which convicted</i>	<i>Sentence of imprisonment</i>	<i>Sentence of fine</i>
Section 420 IPC	3 years rigorous imprisonment	Rs.5,000/- in default to undergo rigorous imprisonment for 3 months
Section 465 IPC	2 years rigorous imprisonment	Rs.5,000/- in default to undergo rigorous imprisonment for 6 weeks

3 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mr.K.Madhan, learned Government Advocate (Crl Side) appearing for the respondent police.

4 Mr. Sankarasubbu, learned counsel for the petitioner submitted that though charges under Section 451 IPC and Section 3 (1) of the TNPPDL Act, 1992, were framed against the petitioner, he was acquitted of those charges, but, has been convicted only of the offence under Sections 465 and 420 IPC. He further contended that Section 465 IPC will not stand attracted even if the prosecution case is accepted in toto, inasmuch as, even according to the prosecution, the petitioner had not forged the impugned sale deed dated 02.11.2011, but, it was done by Chandramouli (P.W.6). In support of this contention, he placed reliance on the judgment of the Supreme Court in **Sheila Sebastian vs. R. Jawaharaj and others**¹.

5 Per contra, the learned Government Advocate (Criminal Side) submitted that after the judgment was delivered on 06.11.2019, the petitioner went into abscondence and was apprehended by the police only on 10.07.2020.

6 Mr. M. Palanivel, learned counsel for the *de facto* complainant, submitted that the *de facto* complainant has filed a cross appeal in Crl.A. Nos.875 of 2019 seeking enhancement of sentence imposed on the petitioner and another cross appeal in Crl.A. No.114 of 2020 challenging the acquittal of the petitioner of the offences under Section 3(1) of the TNPPDL Act and Section 451 IPC.

7 Mr. Sankarasubbu contended that when the maximum sentence is only three years, the relief of suspension of sentence and bail is an automatic right.

8 This Court gave its anxious consideration to the rival submissions.

9 This Court called for information from the trial Court and found that on 06.11.2019, judgment and order was delivered by the trial Court convicting and sentencing the petitioner, as stated in paragraph no.2, supra. Before the trial Court, the petitioner filed Crl.M.P. No.2040 of 2019 under Section 389(3) Cr.P.C. seeking suspension of sentence and bail on the ground that he intends to file an appeal in the High Court. On 06.11.2019, the trial Judge granted interim suspension of sentence and bail upto 06.12.2019. On 06.12.2019, the petitioner preferred an application in Crl.M.P. No.3013 of 2019 for extension of the order of interim suspension of sentence and bail and the case was posted to 18.12.2019. On 18.12.2019, the petitioner did not appear before the trial Court. Therefore, a warrant was issued. Thereafter, the petition was posted to 10.01.2020, 22.01.2020, 12.02.2020, 10.03.2020, 03.04.2020, 18.06.2020 and 13.08.2020. In the meanwhile, on 10.07.2020, the police executed the warrant, arrested the petitioner and lodged him in the prison for serving out the sentence.

10 In the opinion of this Court, the conduct of the petitioner in not appearing before the trial Court for consecutive dates, that too, after obtaining interim suspension of sentence and bail has to be viewed very seriously. This itself shows that if he is granted bail, he will not be available in the event of his appeal being dismissed. In this context, reliance can profitably be placed on the following passage from the Full Bench judgment of this Court in **Santhanapandi and others vs. State**².

"12.While considering the suspension of sentence, as stated, each case is to be considered, on the basis of nature of the offence, manner in which occurrence had taken place, age and antecedent and it is also to be seen, whether in any manner, liberty has been misused in the bail granted earlier and whether by his conduct, the accused has disintitiled himself to the concession so granted and other circumstances like jumping of bail, etc....."

11 In view of the aforemade discussion, this petition for suspension of sentence and bail stands dismissed.

12 As regards taking up the main case itself for final disposal, the Registry is directed to call for the records from the trial Court, prepare the typed set of papers and post the main appeal for final disposal whenever the learned counsel for the appellant is ready.

Post Crl.A. Nos.875 of 2019 and 114 of 2020 for final disposal, along with Crl.A. No.847 of 2019.

-sd/-
06/08/2020

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 PRINCIPAL DISTRICT AND
SESSIONS JUDGE, THIRUVARUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
THIRUTHURAIPOONDI POLICE STATION,
THIRUVARUR DISTRICT.

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

Order

in
CRL.MP.NO.18160/2019
in
CRL.A.NO.847/2019

Date :06/08/2020

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

MK:20/08/2020