



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

Friday, the Twenty First day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice T.RAJA
and

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.1636 of 2020

IN

CRL A(MD) No.596 of 2019

1 MUTHUKUMAR

2 JEYABHARATH

... PETITIONERS/ APPELLANTS

Vs

STATE REP. BY
THE INSPECTOR OF POLICE
TIRUCHENDUR POLICE STATION,
TIRUCHENDUR, THOOTHUKUDI DISTRICT,
CRIME NO.313/2010

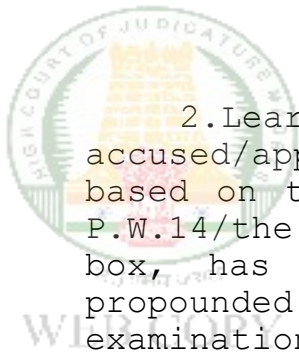
... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by suspending the sentence imposed upon me in S.C.No.281 of 2017 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District by Judgment dated 25.10.2019 pending disposal of the main Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.A.THIRUVADI KUMAR, Advocate for the petitioners and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by T.RAJA.J)

The petitioners/2nd and 3rd accused in S.C.No.281/2017 on the file of the learned I Additional District and Sessions Judge, Thoothukudi District, having suffered the conviction and consequential sentence under Sections 302, 379 and 201 I.P.C, have come to this Court, seeking suspension of sentence, pursuant to the order of suspension of sentence granted by this Court on 11.02.2020 in favour of A-1, during the pendency of appeal.



2.Learned counsel appearing for the petitioners/2nd and 3rd accused/appellants pleaded that that the case of the prosecution, based on the 'last seen theory' was not a safe evidence, because, P.W.14/the mother of the deceased, who has stepped into the witness box, has miserably failed to support the 'last seen theory', propounded by the prosecution, inasmuch as, she deposed in the chief examination that she has seen A-1, A-2 and A-3 coming all together to her house to take up the deceased/her son, to hire a taxi, but in the cross-examination, she has disowned her statement whatever made in the chief examination that she has not seen any one of them. Therefore, the case of the prosecution based on the 'last seen theory' ought not to have been accepted by the trial court. Considering the premises, this Court has granted suspension of sentence in favour of A-1, directing A-1 to stay at Dharmapuri and report before the Dharmapuri Town Police Station twice daily i.e morning at 10.30 a.m., and evening 05.30 p.m, pending disposal of the appeal.

3.Continuing his argument, the learned counsel appearing for the petitioner submitted that when the mother of the deceased has also turned hostile and retracted even from the trial court that she has not seen any one of the accused, A-2 and A-3 also are entitled to get suspension of sentence along with A-1.

4.Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the State, submitted that the evidence of P.W.17 is reliable and trustworthy one and based on the same, the trial court convicted and sentenced the accused. Therefore, in spite of the fact that the mother of the deceased disowned the 'last seen theory', he requested us that suspension of sentence may not be considered for A-2 and A-3.

5.But, we are unable to agree with the submissions made by the learned Additional Public Prosecutor, the reason being that the trial court has proceeded to convict A-1, A-2 and A-3 on the basis of the 'Last Seen Theory', propounded by the prosecution that has been completely disowned by the mother of the deceased and based on which, we have also granted the suspension of sentence in favour of A-1. Therefore, we are of the view that the prayer for suspension of sentence in favour of A-2 and A-3 can also be accepted.

6.In the result, this petition is ordered. The substantive sentence of imprisonment imposed against the petitioners/accused 2 and 3/appellants is suspended on condition that the petitioners/accused 2 and 3/appellants shall each 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 Judicial Magistrate, Tiruchendur;

(a)The first petitioner/A-2 shall stay at Vellore and report <https://hcservices.hc.mysore.gov.in/hcservices/> Vellore South Police Station twice daily i.e morning



at 10.30 a.m., and evening 05.30 p.m; and the second petitioner/A-3 shall stay at Nagappattinam and report before the Velipalayam Police Station twice daily i.e morning at 10.30 a.m., and evening 05.30 p.m, pending disposal of the appeal;

(b) the petitioners shall not leave the jurisdiction of Tamil Nadu without seeking leave of this Court till the disposal of the Appeal; and

(c) The petitioners shall furnish their residential address, change of address, if any and the phone numbers to the respondent police.

sd/-

21/02/2020

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

TO

- 1 THE I ADDITIONAL DISTRICT
AND SESSIONS JUDGE, THOOTHUKUDI,
THOOTHUKUDI DISTRICT.
- 2 THE JUDICIAL MAGISTRATE,
TIRUCHENDUR.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.
- 4 THE INSPECTOR OF POLICE
TIRUCHENDUR POLICE STATION,
TIRUCHENDUR,
THOOTHUKUDI DISTRICT.
- 5 THE INSPECTOR OF POLICE
VELLORE SOUTH POLICE STATION,
VELLORE.
- 6 THE INSPECTOR OF POLICE
VELIPALAYAM POLICE STATION,
NAGAPPATTINAM.
- 7 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 8 THE ADDITIONAL PUBLIC PROSECUTOR,
MADRAS BENCH OF MADRAS HIGH COURT, MADURAI.



+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-3769[I] dated
21/02/2020)

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ORDER

IN

CRL MP (MD) No.1636 of 2020

IN

CRL A (MD) No.596 of 2019

Date :21/02/2020

VS

JM/VR/SAR 3/21.02.2020/4P/10C