



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

Monday, the Thirteenth day of July Two Thousand Twenty
PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) Nos.3112 & 3114 of 2020
IN
CRL RC(MD) No.362 of 2020

BALU @ BALACHANDAR

... PETITIONER/ PETITIONER
IN BOTH THE PETITIONS

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
C1, THIDEER NAGAR POLICE STATION,
MADURAI CITY.
CRIME NO.635/2003

... RESPONDENT/ COMPLAINANT
IN BOTH THE PETITIONS

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the sentence of imprisonment imposed by the Learned 4th Additional Sessions Judge, Madurai in C.A.No.24 of 2017 dated 17/07/2019 in connection with the judgment and order passed by the Learned Chief Judicial Magistrate, Madurai in S.C.No.41 of 2015 dated 09.01.2017 and enlarge this Revision Petitioner/Accused on bail, pending disposal of the above said Criminal Revision Petition.

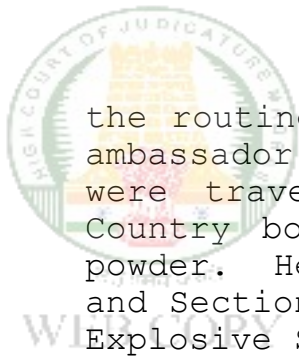
Prayer in CRL MP(MD). 3114/ 2020 :

To exempt this revision petitioner from surrender before the court concerned in regard with the judgment and sentence passed by the Learned 4th Additional Sessions Judge, Madurai in C.A.NO.24 of 2017 dated 17/07/2019 in connection with the judgment and order passed by the Learned Chief Judicial Magistrate, Madurai in S.C.No.41 of 2015 dated 09.01.2017 in the interest of justice and thus render justice.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.J.WILLIAM CHRISTOPHER, Advocate for the petitioner in both the petitions and of Mrs.ANANTHA DEVI, Government Advocate on behalf of the Respondent in both the petitions, the court made the following order:-

Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent.

2. The case against the petitioner is that on 12.05.2003 at Periyar Bus Stand near Kattabomman Statue, during



the routine checkup, the respondent police stopped the white colour ambassador Car MDA -6744, in which, the petitioner and three others were travelling, at that time, the respondent police found a Country bomb, three knives, one suri knife and 50 gms of chilli powder. Hence, a case was registered under Sections 399, 402 I.P.C and Section 27 of the Indian Arms Act and Section 5(a) of the Indian Explosive Substance Act against the petitioner and the other accused persons. After investigation, a charge sheet was filed and the petitioner was convicted by the learned Chief Judicial Magistrate, Madurai in S.C.No.41 of 2015, dated 09.01.2017.

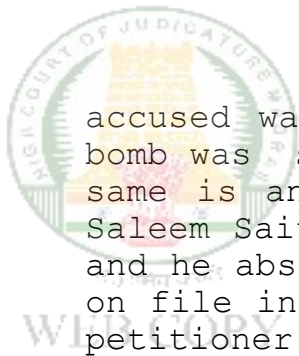
3.As against the said conviction and sentence, the petitioner has preferred an Appeal in Crl.A.No.24 of 2017 before the learned IV Additional Sessions Judge, Madurai, and the said appeal was dismissed by confirming the trial Court order. Aggrieved over the same, the petitioner preferred this Criminal Revision Case along with the suspension of sentence application.

4. On the side of the petitioner, it is stated that the petitioner is arrayed as accused No.3 in the main case. The Trial Court convicted the petitioner to undergo 4 years Rigorous Imprisonment under Section 5(a) of the Indian Explosive Substance Act and Section 27 of the Indian Arms Act. The trial can be commenced only after getting the consent from the District Magistrate under Section 7 of the Indian Explosive Substance Act. This mandatory provision was not followed. It is further stated that offence under Section 27 of the Indian Arms Act is not made out as the weapon is only knife and chilli powder. Only Section 25 (1-B) (b) of the Indian Arms Act is applicable and Section 27 of the Indian Arms Act is not applicable.

5.It is further stated that motive of decoity is not proved. Only on the basis of the confession given before the police, the motive of decoity is created. Confession before the police is not valid and prays for the suspension of sentence.

6.On the side of the petitioner, it is stated that the petitioner was not able to attend the First Appellate Court on the date of judgment and prayed he may be exempted from personal appearance.

7.On the side of the prosecution, it is stated that the trial Court judgment was confirmed by the First Appellate Court and the accused was convicted under Section 399, 402 I.P.C and Section 27 of the Indian Arms Act and Section 5(a) of the Indian Explosive Substance Act. The prosecution has proved the case beyond all reasonable doubts. The Trial Court and the First Appellate Court, after careful consideration, convicted the accused. A car was found with country bomb, which was hidden in rice brawn and strewn with a polythene cover and the material objects were seized under Form 95, of individual witnesses, the statements of the



accused was also recorded. It is further stated that the country bomb was sent to the Forensic Department and it was proved that the same is an explosive substance. The fourth accused viz., Saleem @ Saleem Sait, did not appear before the Court for a very long period and he absconded and the case against A4 was split up and was taken on file in P.R.C.No.1 of 2015 and if the sentence is suspended, the petitioner also may abscond.

8. Records perused.

9. It is seen that the accused was convicted by the Trial Court on 09.01.2017. This conviction was confirmed by the First Appellate Court on 17.07.2019. Admittedly, the accused did not appear before the First Appellate Court on the date of pronouncement of the judgment. Hence, it is decided that the petitioner is not entitled for an order of exemption from personal appearance. Whether the co-accused, who were convicted along the petitioner are in custody is not elicited in the petition.

10. In the above facts and circumstances, this Court is not inclined to suspend the sentence imposed on the petitioner. Hence, these Miscellaneous Petitions are dismissed.

sd/-
13/07/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDGE,
4th ADDITIONAL SESSIONS JUDGE, MADURAI.
- 2 THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 3 THE INSPECTOR OF POLICE
C1, THIDEER NAGAR POLICE STATION,
MADURAI CITY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) Nos.3112 & 3114 of 2020
IN
CRL RC(MD) No.362 of 2020
Date :13/07/2020

DSS

<https://hcma.cemilab.gov.in/hcma-services> 31/07/2020/3P/5C