



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

Friday, the Eleventh day of September Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.3526 of 2020

IN

CRL A(MD) No.220 of 2020

1 VELMURUGAN
2 KUMAR @ KOOTHAN
3 THANNASI

... PETITIONERS/APPELLANTS

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
PERAIYUR POLICE STATION,
MADURAI DISTRICT.
CR.NO. 188 OF 2007
OF SEDAPATTY POLICE STATION.

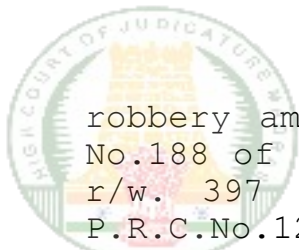
... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed upon the Petitioners/Appellants by the Learned 4th Additional District and Sessions Judge, Madurai in SC.No.396 of 2010 by the Judgment dt.12.3.2020 and order to release them on bail pending disposal of the Criminal Appeal.

Order :This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.R.MARIAPPAN, Advocate for the petitioner and of MR.K.DINESH BABU, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned IV Additional District and Sessions Judge, Madurai in S.C.No.396 of 2010 dated 12.03.2020, till the disposal of the appeal.

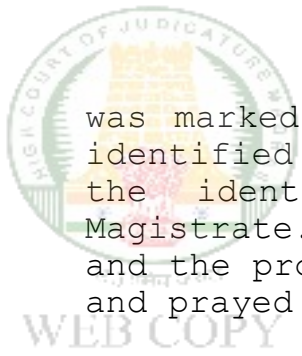
2.The case against the petitioners is that the petitioners and others conspired together and waylaid a two wheeler bearing registration No.TN-55-H-6399 threatened the defacto complainant and his wife with knife. A2 to A4 took the defacto complainant into a sugarcane farm. A1 robbed 32 sovereigns of gold from the wife of the defacto complainant. The third accused robbed golden ring, watch and cell phone from the defacto complainant. Thereafter, A5 joined them and all of them stayed at Vairam Lodge and they shared the loot of



robbery among themselves. A case against the petitioners in Crime No.188 of 2007 under Section 120(b) r/w. 392 of IPC and Section 395 r/w. 397 of IPC was registered. The case was taken on file as P.R.C.No.12 of 2009 by the learned Judicial Magistrate No.II, Usilampatti and the same was committed to learned Principal District and Sessions Judge. The case was taken on file as S.C.No.396 of 2010 and the learned IV Additional District and Sessions Judge found A2 to A4 guilty under Sections 120(b) r/w. 392 of IPC and Section 395 r/w. 397 of IPC. A5 was acquitted by the trial Court. The charge against A1 abets due to his death. The learned IV Additional District and Sessions Judge convicted the petitioners (A2 to A4) under Section 120(b) r/w. 392 of IPC and sentenced them each to undergo ten years rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo six months simple imprisonment and convicted them under 395 r/w. 397 of IPC and sentenced them each to undergo ten years rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo six months simple imprisonment. Against the conviction and sentence imposed by the trial Court, the petitioners have filed a criminal appeal and along with the appeal, they filed this petition for suspension of sentence.

3.On the side of the petitioners, it is stated that Section 120 (b) of IPC is not made out. The trial Court has come to the conclusion that there is no evidence against A5 and A5 was acquitted by the trial Court. Then the number of accused involved in the offence was only 4 and hence, the offence under Section 392, 395 and 397 of IPC is not made out. The original complaint was suppressed by the prosecution. There is contradiction regarding the place of occurrence and time of the occurrence. The injuries of P.W.3 as narrated by P.W.1, was not established through medical examination. FIR reached the Court after 11 hours. This delay was not explained by the prosecution. M.Os.7 and 8 were not identified by P.W.1. The confession statement are not proved. Only certified copies of the confession statements are filed and they are invalid under Section 65 of Indian Evidence Act. There was no recovery from A1 and A5. A1 was not identified by any of the witness. The allegation against the petitioner is that they robbed golden ring, watch and cell phone from P.W.1 but none of the things were recovered from the accused. P.W.4 was not an eye witness but he identified the accused in the identification parade. The date of identification parade stated in the deposition of P.W.1, P.W.3 and P.W.4 and Ex.P25 are contradictory. There are much more points to be argued in the main appeal and prayed the sentence to be suspended till the disposal of the appeal.

4.On the side of the prosecution, it is stated that the prosecution has examined 21 witnesses and marked 29 documents and marked 10 material objects. After perusing all the documents and verifying the depositions, the trial Court has rightly convicted the



was marked as Ex.P18. The seizure of M.Os proved. P.W.1 and P.W.3 identified M.O.7. P.W.1, 3 and 4 clearly identified the accused in the identification parade conducted by the learned Judicial Magistrate. The report of identification parade was marked as Ex.P25 and the prosecution has proved the case beyond all reasonable doubts and prayed the petition to be dismissed.

5.It is seen that the offence against the petitioner is serious in nature. The petitioners are convicted only on 12.03.2020. The reasons stated by the petitioner in this petition can be considered only at the time of hearing the main appeal. At the present stage of the case, the reasons stated by the petitioner are not satisfactory.

6.In the above circumstances, this Court is not inclined to grant suspension of sentence to the petitioner. This petition is dismissed.

sd/-
11/09/2020

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

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1.THE 4TH ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI
- 2.THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3.THE INSPECTOR OF POLICE
PERAIYUR POLICE STATION, MADURAI DISTRICT.
CR.NO. 188 OF 2007 OF SEDAPATTY POLICE STATION.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

ORDER IN
CRL MP(MD) No.3526 of 2020
IN CRL A(MD) No.220 of 2020
Date :11/09/2020

MRN
PK/JC/SAR-2/11.09.2020 : 3P/5C

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