



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

Thursday, the Twenty Third day of January Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.11512 of 2019

IN

CRL RC(MD) No.977 of 2019

MARIAPPAN

... PETITIONER/REVISION PETITIONER

Vs

STATE REP. BY
THE INSPECTOR OF POLICE
RADHAPURAM POLICE STATION,
TIRUNELVELI DISTRICT.
(IN CRIME NO.101/2011)

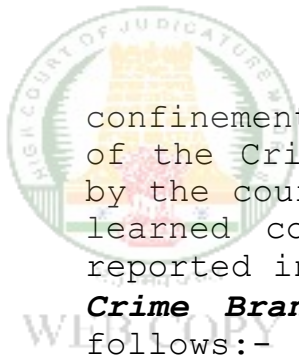
... RESPONDENT/REVISION RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence by granting bail in C.A.No.132/2018 dated 12.11.2019 on the file of the III Additional District and Sessions Judge, Tirunelveli, Tirunelveli District in C.C.No.328/2011 dated 29.10.2018 on the file of the Learned Judicial Magistrate, Vallioor, Tirunelveli District till the disposal of the Criminal Revision and to render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.K.PRABHU, Advocate for the petitioner and of MR.A.P.G.OHM CHAIRMA PRABHU, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence of imprisonment passed in C.A.No.132 of 2018, dated 12.11.2019 by the III Additional District and Sessions Judge, Tirunelveli and enlarge the petitioner on bail, pending disposal of the criminal revision.

2.The learned counsel appearing for the petitioner submitted that there are contradictions in the evidence of PW1 to PW4 and the prosecution has not come forward with truth and the witnesses also stage by stage improved their version and the petitioner had good ground to succeed in the revision and due to illness, the petitioner has not surrender to take the judgment of the appellate court and his absence was neither willful nor wanton and hence, for the relief of suspension of sentence, the petitioner need not surrender and



confinement is well within the power conferred under section 397(1) of the Criminal Procedure Code and prays that the sentence imposed by the courts below may be suspended. For the above proposition, the learned counsel appearing for the petitioner submitted a ruling reported in **2008(1) MLJ 1001 (R.Ramamoorthy Vs. Inspector of Police, Crime Branch, Erode)**, wherein it was held in para 4 and 5 as follows:-

"4.In respect of the same question of law viz., whether the accused, concerned in the revision against conviction, has to surrender and thereafter only seek the relief of suspension of sentence, the Hon'ble Mr.Justice KHALID (as he then was) has held in the decision reported in Ibrahim V. State of Kerala (1979) KLT 857 has held that in respect of the revision against conviction and sentence, for granting the relief of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the power contemplated under Section 397(1) of Cr.P.C as Section 397(1) Cr.P.C, itself is very clear that there is absolutely no ambiguity as the reading of the words "direct that execution of any sentence or order to suspended."

5.In view of the above, the Court is of the considered view that in these matters, more particularly in respect of any revision against conviction, the accused need not surrender and undergo confinement for seeking the relief of suspension of sentence pending disposal of the Criminal Revision."

3.On the other hand, on the side of the respondent, it is argued that this petitioner committed a grave offence as against the society and there is a chance for the petitioner to flee from the clutches of law and chance of absconding and prays that the petition has to be dismissed.

4.This court has carefully considered the rival contentions put forth on either side and also perused the materials available on record.

5.On perusal of the decision reported in **2008(1) MLJ 1001 (R.Ramamoorthy Vs. Inspector of Police, Crime Branch, Erode)**, it is stated that Honourable Mr.Justice KHALID (as he then was) has held in the decision reported in Ibrahim V. State of Kerala (1979) KLT.857 has held that in respect of the revision against conviction and sentence, for granting the relief of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the power contemplated under Section 397(1) of Cr.P.C as Section 397(1) Cr.P.C. itself is very clear that there is absolutely no ambiguity as the reading of the words "direct that execution of any sentence or order be suspended.



6. In view of the above settled principles of law by the Hon'ble Supreme Court as well as by His Lordship Justice KHALID, it is held that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the revision and the petitioner is directed to be enlarged on bail on condition that he shall 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 Judicial Magistrate, Valliyoor and on further condition that the petitioner shall appear before the said court daily twice I.e., at 10.30 am and 5.00 pm pending appeal.

sd/-
23/01/2020

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

TO

1 THE III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, TIRUNELVELI.

2 THE JUDICIAL MAGISTRATE,
VALLIYOOR.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI.

4 THE INSPECTOR OF POLICE
RADHAPURAM POLICE STATION,
TIRUNELVELI DISTRICT.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.PRABHU, Advocate (SR-1282[I] dated 23/01/2020)

ORDER
IN
CRL MP(MD) No.11512 of 2019
IN
CRL RC(MD) No.977 of 2019
Date :23/01/2020

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