



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

Tuesday, the Ninth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.1696 of 2021

IN

CRL A(MD)No.220 of 2020

1 VELMURUGAN

2 KUMAR @ KOOTHAN

3 THANNASI

... PETITIONERS/ APPELLANTS

Vs

STATE REP.BY

THE INSPECTOR OF POLICE,

PERAIYUR POLICE STATION,

MADURAI DISTRICT.

IN CRIME NO.188 OF 2007 OF

SEDAPATTI POLICE STATION.

... RESPONDENT/ RESPONDENT

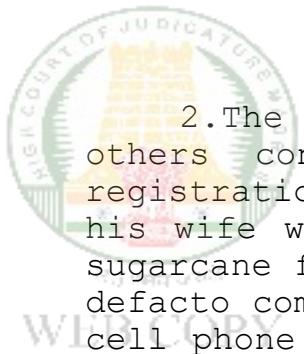
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed upon the Petitioners /Appellants by the Learned 4th Additional District and Sessions Judge, Madurai in S.C.No.396 of 2020 by the judgment dated 12.03.2020 and order to release the petitions on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD)No.220 of 2020:

To admit this appeal and call for the records in S.C.No.396 of 2010 on the file of the 4th Additional District and Sessions Judge, Madurai dated 12.03.2020 and allow this appeal by setting aside the conviction and sentence passed against the appellant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.S.MUNIYANDI, Advocate for the petitioners and of Mrs.S.BHARATHI, Government Advocate 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 statements 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

<https://hcservices.mca.gov.in/hcservices/>



appeal and prayed the sentence to be suspended till the disposal of the appeal. It is further stated that the petitioners are in custody from 12.03.2020 onwards.

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 petitioners. The admitted portion of the confession statement of A2 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 petitioners are in custody from 12.03.2020 onwards i.e., for the past one year and it is also seen that there are some arguable points for consideration in the criminal revision case. There is no likelihood of the appeal to be taken up for final hearing in the near of future.

6. Accordingly, Crl.M.P(MD).No.1696 of 2021 is allowed and the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on the following conditions:

(i) the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the IV Additional District and Sessions Judge, Madurai.

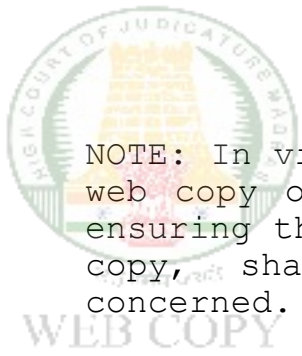
(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their valid identity card to ensure their identity.

(iii) the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the revision case or until further orders.

sd/-
09/03/2021

/ TRUE COPY /

/ /2021
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 INSPECTOR OF POLICE,
PERAIYUR POLICE STATION, MADURAI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.1696 of 2021
IN
CRL A (MD) No.220 of 2020
Date :09/03/2021

rmk
MS/PN/SAR-4/11.03.2021/4P.5C