



Crl.MP(MD)Nos.5423, 6659 and 7378 of 2020

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

Thursday, the Twenty Fifth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)Nos.5423, 6659 and 7378 of 2020
in
Crl.A(MD)Nos.479, 498 and 482 of 2019

LAKSHMI KANDHAN ... PETITIONER/APPELLANT/ACCUSED No.4
IN CRL MP(MD)No.5423 OF 2020
IN CRL A(MD)No.479 OF 2019

MARIYAPPAN ... PETITIONER/APPELLANT/2nd ACCUSED
IN CRL MP(MD)No.6659 OF 2020
IN CRL A(MD)No.498 OF 2019

MAHESH ... PETITIONER/APPELLANT
IN CRL MP(MD)No.7378 OF 2020
IN CRL A(MD)No.482 OF 2019

Vs

STATE, REP.BY
THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI DISTRICT.
IN CRIME NO.693 OF 2011. ... RESPONDENT/RESPONDENT/COMPLAINANT
IN CRL MP(MD)Nos.5423 & 6659 of 2020
IN CRL A(MD)Nos.479 & 498 OF 2019

STATE, REP.BY
THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI DISTRICT.
IN CRIME NO.693 OF 2011. ... RESPONDENT/RESPONDENT
IN CRL MP(MD)No.7378 OF 2020
IN CRL A(MD)No.482 OF 2019

Prayer in CRL MP(MD)No.5423 OF 2020 IN CRL A(MD)No.479 OF 2019:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of sentence by granting bail in S.C.No.233 of 2012 on the file of the Mahalir Neethimandram (Fast Track Court)



Tuticorin, Tuticorin District, dated 13.08.2019 till the disposal of criminal appeal.

Prayer IN CRL MP(MD)No.6659 OF 2020 IN CRL A(MD)No.498 OF 2019 :

To suspend the sentence and conviction made in the Judgment in SC.no. 233 of 2012 on the file of the Learned Sessions Judge, Mahalir Needimandaram, (Fast Track Mahila Court), Thoothukudi District 13.08.2019 pending disposal of the instant Criminal Appeal.

Prayer IN CRL MP(MD)No.7378 OF 2020 IN CRL A(MD)No.482 OF 2019 :

To enlarge the petitioner on bail by **SUSPENDING THE SENTENCE** imposed upon him in S.C.No.233 of 2012 on the file of the Learned Sessions Judge, mahalir Neethimandram(Fast Track Mahila Court) Thoothukudi, Thoothukudi District dated 13.08.2019 pending disposal of the instant Criminal Appeal.

Prayer in CRL A(MD)No.479 of 2019:

To call for the records from the lower court in S.C.No.233 of 2012, on the file of the Mahalir Neethimandaram(Fast Track Court), Tuticorin, Tuticorin District and set aside the judgment, dated 13.08.2019 by acquitting the accused by allowing the Appeal.

Common Prayer in CRL A(MD)Nos.498 and 482 of 2019:

To call for the records in S.C.No.233 of 2012, on the file of the learned Sessions Judge, Mahalir Neethimandaram(Fast Track Mahila Court), Thoothukudi, Thoothukudi District and set aside the judgment dated 13.08.2019 by acquit the Appellant of the charges leveled against him.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVEL, Senior counsel for Mr.K.PRABHU, Advocate for the petitioner in CRL MP(MD)No.5423 OF 2020 IN CRL A (MD)No.479 OF 2019 and Mr.V.MALAIYENDRAN, Advocate for the Petitioner in CRL MP(MD)No.6659 OF 2020 IN CRL A(MD)No.498 OF 2019 and Mr.AR.L.SUNDARESAN, Senior counsel for Mr.S.SATHYA CHIDAMBARAM, Advocate for the Petitioner in CRL MP(MD)No.7378 OF 2020 IN CRL A (MD)No.482 OF 2019 and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent in all the petitions, the Court made the following order:-

Reserved on : 05.03.2021

Pronounced on : 25.03.2021

COMMON ORDER

(Order of the Court was made by **G.ILANGOVA**N, J)

These Criminal Miscellaneous Petitions are filed to suspend the sentence passed by the Sessions Judge, Mahalir Neethimandram (Fast
<https://hcservices.ecourts.gov.in/hcservices/>



Track Mahila Court), Thoothukudi, in SC No.233 of 2012, dated 13.08.2019 and enlarge the petitioners/A2 to A4 on bail, pending disposal of the criminal appeals.

2. According to the prosecution, the victim Vishal Umesh/PW3 son of PW1 and PW2 was studying in a school. A1 was working as a Car Driver and he used to take the victim child to the school. On 17.08.2011, there was a conspiracy between A1 to A6. While A1 was proceeding with TATA Safari TN-69-M-7557, along with the victim/PW3, A2 to A4 had got into the vehicle claiming to be the friend of PW1 and thereafter, acted as if they were threatening A1 and had kidnapped the minor boy/PW3 to a house in Kathirvel Nagar, where the boy was detained and assaulted and subsequently, demanded a ransom of Rs.5 Crores from the parents of the boy/PW3.

3. To prove the charges, the prosecution examined 24 witnesses and marked 29 documents and MO1 to MO15. On the side of the accused, no witness was examined and no document was marked.

4. The trial court, after considering the materials available on records, came to the conclusion that the charges framed against A1 to A6 were proved beyond all reasonable doubt and A1 to A6 were convicted for the offence under section 120-B r/w 364(A) IPC and sentenced them to undergo Life Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months SI; for the offence under sections 342 IPC, convicted A1 to A4 and imposed a fine of Rs.1,000/-, in default to undergo 3 months SI and convicted A1 to A3 for the offence under section 323 IPC and imposed a fine of Rs.1,000/-, in default to undergo 3 months SI; for the offence under section 506(ii) IPC convicted A3 and sentenced him to undergo 7 years RI and to pay a fine of Rs.1,000/-, in default to undergo 6 months SI. Aggrieved by the judgment of the trial court, A2 to A4 as petitioners are before this court with these petitions seeking suspension of sentence.

5. The combined submissions of the learned counsel for the respective petitioners are narrated below:-

(i) The first argument on the part of the petitioners is that the 3rd accused alleged to have slapped the victim and that too was found to be only simple injury; alleged to have identified the house where he kept the boy are in custody ever-since from the date of judgment on 13.08.2019.

(ii) It is further argued that A5 and A6 have already released on bail by suspending the sentence, by this court and the victim boy namely PW3 was found to be incompetent to give evidence by PW20, the concerned Judicial Magistrate for recording the statement under section 164 of Cr.P.C. But, however, he was alleged to have identified the accused persons in the identification parade took place on 29.08.2011



and so, the identification made by PW3 is not believable and reliable.

(iii)The further argument is that the victim namely PW3, had admitted during cross examination by the counsel for the 4th accused that he was given instructions by his parents as to how he must give evidence before the court and according to the learned counsel appearing for the petitioners, the prosecution story is wholly unbelievable and in the light of the discrepancies brought on record, the petitioners are entitled for suspension of sentence.

6.According to the learned Additional Public Prosecutor appearing for the State, it is a case of kidnapping a minor boy for ransom and the case has been proved beyond reasonable doubt against the accused persons and no discrepancy has been brought on record by the accused persons for claiming benefit of suspension of sentence. It is also his further submission that the fingerprints lifted from the Car as well as from the house where the boy was illegally kept matched with that of the fingerprints of the accused persons and seeks dismissal of petitions.

7.Heard both sides and perused the records.

8.It is a case of kidnapping a minor boy for ransom. Even though, there are discrepancies in the evidence of PW3, the child witness, prima facie, no ground is made out by the petitioners to disbelieve the evidence of PW3 over the occurrence. The discrepancies that have been pointed out by the petitioners can be discussed and decided only at the time of final hearing/argument in the main appeal.

9.Perusal of the evidence available on record shows that PW3 had been kidnapped and detained in a house identified by him and only on the next day, he was left in the place from where he was secured. Nothing has been brought on record to disbelieve the evidence of PW3 over this occurrence. Moreover, PW3, being a child is also prone for tutoring to some extent. Absolutely, no strong motive has been brought on record by the petitioners to falsely implicate them in this case by the parents of PW3.

10.PW3 identified A1 to A4 in the identification parade that took place on 28.08.2011, in the presence of PW20, in Palayamkottai Central Prison. Simply because he was found to be incompetent to give evidence under section 164 Cr.P.C, the contention that his identification of the accused in the identification parade should be disbelieved cannot be accepted at this stage. It is a matter for appreciation of evidence during final hearing. The identification of accused persons by PW3 is also corroborated by the identification



made by the other witnesses namely PW4 and PW5, in the identification parade.

11. Further, the petitioner cannot take the advantage of suspension of sentence granted to A5 and A6 and in this case, they were granted bail only by taking into account the alleged overtact attributed against them. So, this argument on the side of the petitioners is also rejected and finally, the petitions deserve dismissal.

12. Even though the petitioners are in custody for more than a year, we are of the considered view that this is not a fit case to grant the relief of suspension of sentence and bail.

13. The criminal appeal is of the year 2019 and so, the matter can be taken up for final disposal. So, we find that no merit in these petitions and accordingly, are dismissed.

sd/-

25/03/2021

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

TO

1. THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM (FAST TRACK COURT),
TUTICORIN, TUTICORIN DISTRICT.
2. THE SUPERINTENDENT, CENTRAL PRISION,
PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

Cr1.MP(MD)Nos.5423, 6659 and 7378 of 2020
in

Cr1.A(MD)Nos.479, 498 and 482 of 2019

Date : 25/03/2021

dss

AE/SMA/ (30/03/2021) 5P / 5C