



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

Tuesday, the Twenty Eighth day of September Two Thousand and Twenty One

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PRESENT

The Hon'ble Mr.Justice V.BHARATHIDASAN
and
The Hon'ble Mrs.Justice J.NISHA BANU

Crl.M.P.(MD).Nos.6681 and 7096 of 2021 in
Crl.A.(MD).Nos.479 and 482 of 2019

LAKSHMI KANDHAN

... PETITIONER/APELLANT
IN CRL MP(MD) No.6681/2021

MAHESH

... PETITIONER/PETITIONER/APELLANT
IN CRL MP(MD) No.7096/2021

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
TUTICORIN SOUTH POLICE STATION,
TUTICORIN DISTRICT.
(CRIME NO. 693 OF 2011).

... RESPONDENT/RESPONDENT
IN CRL MP(MD) No.6681/2021

... RESPONDENT/RESPONDENT/COMPLAINANT
IN CRL MP(MD) No.7096/2021

Prayer in CRL MP(MD) No.6681/2021 IN CRL A(MD) No.479/2019 :

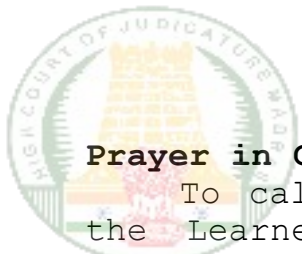
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of sentence by granting in S.C.No.233 of 2012, dated 13.08.2019 on the file of the Mahalir Neethimandram (Fast Track Court), Tuticorin, Tuticorin District.

Prayer in CRL MP(MD) No.7096/2021 in CRL A(MD) No.482/2019 :

To Suspending the Sentence imposed upon him in SC.No.233 of 2012 on the file of learned Sessions Judge, Mahalir Neethimandram (Fast Track Court), Thoothukudi, Thoothukudi District dated 13.8.2019 pending disposal of the main Criminal Appeal.

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

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



Prayer in CRL A(MD) No.482/2019 :

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 and Acquit the Appellant of the charges leveled against him.

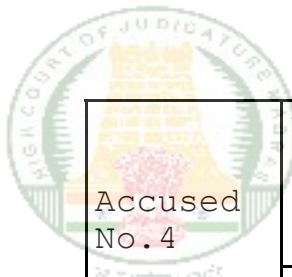
Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.K.PRABHU, Advocate for the petitioner in CRL MP(MD) No.6681 of 2021 and Mr.AR.L.SUNDARESAN, Senior Counsel for Mr.S.SATHYA CHITHAMBARAM, Advocate for the Petitioner in CRL MP(MD) No.7096 of 2021 and of MR.S.RAVI, Additional Public Prosecutor for the Respondent in both petitions, the court made the following order:-

(Order of the Court was made by V.BHARATHIDASAN.,J)

Totally there are six accused and the petitioners are the accused Nos.3 and 4 in Sessions Case No.233 of 2012, on the file of the Mahalir Neethimandaram (Fast Track Court), Tuticorin. A3 stood charged and tried for the offences under Sections 120(B) r/w. 364 (A), 342, 323 and 506(ii) of I.P.C. and A4 stood charged and tried for the offences under Sections 120(B) r/w. 364(A) and 342 of I.P.C.

2. The trial Court, vide impugned judgment dated 13.08.2019, has convicted the petitioners/A3 and A4 for the above said offences and imposed the sentences, thus:

Rank of the Accused	Charge	Conviction
Accused No.3	U/s. 120(B) r/w. 364(A) of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of six months.
	U/s. 342 of I.P.C.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.
	U/s. 323 of I.P.C.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.
	U/s. 506(ii) of I.P.C.	To undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of six months.



Accused No.4	U/s. 120(B) r/w. 364(A) of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of six months.
	U/s. 342 of I.P.C.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.

Now, challenging the above said conviction and sentence, A3 and A4 have preferred these appeals. Pending appeals, they seek suspension of sentence.

3. The case of the prosecution in brief is as follows:

The victim in this case one R.K.Vishal Umash, aged about 4 ½ years at the time of occurrence, is the son of P.Ws.1 and 2. A1 in this case was working as a Driver under them and all the accused conspired together to kidnap the boy for demanding ransom. In furtherance of the same, on 17.08.2011, A1 took the boy to the School, all the accused joined him, kidnapped the boy, kept in an isolated place for two days and demanded Rs.5 crores. Immediately, P.Ws.1 and 2 informed the police, crime was registered and the investigation commenced, after coming to know about the same, all the accused freed the boy and escaped. Thereafter, all the accused were arrested and the trial Court has convicted all the accused as mentioned above.

4. Heard Mr.AR.L.Sundaresan, learned Senior counsel appearing for A3 and Mr.V.Kathirvelu, learned Senior counsel appearing for A4 and perused the materials available on records.

5. The learned Senior counsel appearing for the petitioner/Accused, would submit that P.W.3, the victim boy, was less than five years old at the time of occurrence and he has been tutored by P.Ws.1 and 2, that was admitted by him in his cross examination. That apart, P.W.20, the Judicial Magistrate, who conducted a Test Identification Parade, also has recorded that the victim, P.W.3, is not competent to give evidence. Based on his evidence, the petitioners have been convicted by the trial Court. Admittedly, no amount has been transferred to the accused and the offence under Section 365(A) I.P.C., is not made out. However, without considering the same, the trial Court has convicted the petitioners. The learned Senior counsel further submitted that this Court has already granted the relief of suspension of sentence to the co-accused viz., A5 and A6 in CrI.M.P. (MD).Nos.8444 and 8561 of 2019, dated 24.11.2019.

6. Mr.S.Ravi, learned Additional Public Prosecutor vehemently contended that it is a case of kidnapping and demanding ransom. A1 is the driver of P.Ws.1 and 2 and with his help, all the accused conspired together to kidnap the victim boy, P.W.3, and kept him in an isolated



place, demanding ransom and assaulted him. After the investigation commenced, they freed the boy. Considering the gravity of the offence, the trial Court has rightly convicted the accused and the petitioners are not entitled for suspension of sentence.

7. From the perusal of the records, it could be seen that mainly based on the evidence of P.W.3, the victim boy, who is aged about 4 ½ years old at the time of occurrence, the trial Court has convicted the accused. However, as pointed out by the learned Senior counsel that the learned Judicial Magistrate, who has conducted Test Identification Parade, has recorded that the boy was not fit to give evidence. We find some arguable points involved in the appeal, the petitioner/accused is in jail for more than two years. Now, it is stated that similarly placed accused viz., A5 and A6 were granted the relief of suspension of sentence by this court.

8. Considering the above facts, we are of the opinion that the petitioners have made out a *prima facie* case for grant of suspension of sentence, during the pendency of the appeal. Accordingly, the Criminal Miscellaneous Petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail, on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like-sum to the satisfaction of the learned Mahalir Neethimandram (Fast Track Court), Tuticorin, Tuticorin District.

ii. The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until further orders.

iii. On any particular date, if the petitioners are not able to appear, leave is granted to the petitioners to file an application under Section 317 of Cr.P.C. and appear before the trial Court on any other day, as determined by the trial Court, in lieu of the day on which they would absent.

sd/-
28/09/2021

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

+1 CC to M/s.K.PRABHU, Advocate (SR-6651[I] dated 28/09/2021)

ORDER IN
Crl.M.P.(MD).Nos.6681 & 7096 of 2021
in
Crl.A.(MD).Nos.479 and 482 of 2019
Date :28/09/2021

USK/JM/SAR-III/(01.10.2021) 5P-6C