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Crl.R.C.No.1139 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.1139 of 2022
and
Crl.M.P.No.12710 of 2022

B.Babu (M/32 years)

... Petitioner

Versus

1.The Public Prosecutor,
Coimbatore.

2.The Inspector of Police,
Ukkadam Police Station,
Coimbatore.

(Crime No.679 of 2017)

... Respondents

Criminal Revision Case filed under Section 397 read with 401 Code of Criminal Procedure, to set aside the order dated 13.07.2022 passed in Crl.M.P.No.3332 of 2022 in C.A.No.42 of 2022 by the Learned Principal & Sessions Judge, against the Judgment dated 30.06.2022 passed in S.C.No.225 of 2017, on the file of the First Additional Assistant Court, Coimbatore, and to allow this revision.

For Petitioner : Mr.C.D.Sugumar

For Respondents : Mr.S.Vinoth Kumar,
Government Advocate (Crl.side)



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ORDER

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This Criminal revision is filed aggrieved by the order of the Learned Principal & Sessions Judge, Coimbatore, dated 13.07.2022 in Crl.M.P.No.3332 of 2022 in and by which, the prayer of the petitioner, to suspend the sentence and enlarge him on bail, pending disposal of the appeal in C.A.No.42 of 2022, was rejected by the learned Sessions Judge.

2.The petitioner was convicted by the Learned Assistant Sessions Judge, in S.C.No.225 of 2017 for the offence punishable under Section 307 of IPC, and imposed the maximum imprisonment of seven years Rigorous Imprisonment. Apart from this, he was acquitted from the offences under Sections 294(b) and 506(ii) of IPC.

3.Upon the appeal being moved, while making the appeal over to the IV-Additional District and Sessions Judge, the learned Sessions Judge, rejected the prayer for suspension of sentence.

4.The Learned Counsel for the petitioner would submit that the petitioner/accused has made out more than a prima facie case in the appeal on merits. Unless and otherwise, the sentence is suspended, the petitioner



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will be put to be grave prejudice. The learned Counsel would also submit that the Appellate Court primarily dismissed the application for suspension of sentence, on the ground that there are two other cases pending against the petitioner. But, in respect of the two cases pending against the petitioner/accused is concerned, one is in the nature of petty case and another one is under Section 307 of IPC, case, in which, the petitioner was acquitted, this fact was not brought to the notice of the Appellate Court by the prosecution. Therefore, he prays to allow the revision.

5.Per contra, the Learned Government Advocate (Criminal side) would submit that this is the case, in which the prosecution has proved the charge to the hilt and the Trial Court has rightly convicted the petitioner. Further he would submit that considering the fact that the petitioner has got antecedents at the time of filing of suspension of sentence, the early application for suspension of sentence was dismissed by the Appellate Court on 13.07.2022.

6.I have considered the rival submissions made on behalf of either side and perused the material records of this case.



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7.Considering the nature of allegations in this case, the fact that the petitioner is in prison from 30.07.2022, I am of the view that since the petitioner is in Jail for about three months, now, the sentence can be suspended with appropriate condition.

8.Accordingly, the Criminal Revision is allowed and the order of the Learned Principal & Sessions Judge, dated 13.07.2022 made in Crl.M.P.No.3332 of 2022 in Crl.A.No.42 of 2022, is set aside.

9.The petitioner is ordered to be enlarged on bail, pending disposal of the appeal, on the file of the IV- Additional District & Sessions Judge, Coimbatore, on the following conditions:-

(a) the petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the Trial Court;

(b) the petitioner and the sureties shall affix their photographs and left thumb impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhar Cards or Bank Pass books to ensure their identities;



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(c) the petitioner shall appear before the **IV-Additional District Court, Coimbatore**, on the first working day of every English Calendar Month at 10.30 A.M until the disposal of the Criminal Appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C., and shall appear before the Trial Court on any other day in *lieu* of the date of his absence, as directed by the Trial Court.

29.08.2022

Index : yes/no
Speaking/Non-speaking order
klt

To

- 1.The Principal & Sessions Court,Coimbatore.
- 2.The IV-Additional District & Sessions Court, Coimbatore.
- 3.The First Assistant Sessions Court, Coimbatore.
- 4.The Public Prosecutor, High Court of Madras.
- 5.The Superintendent of Police, Central Prison, Coimbatore.
- 6.The Public Prosecutor, Coimbatore.
- 7.The Inspector of Police, Ukkadam Police Station, Coimbatore.



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D.BHARATHA CHAKRAVARTHY, J.

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