



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

Friday, the Twelfth day of May Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5963 of 2023
IN
CRL A(MD) No.521 of 2022

MARK MICHAEL SAMRAJ

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
KENIKARAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
CRIME NO.5 OF 2021

... 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 execution of sentence by granting bail in S.C.No.63 of 2021 on the file of Additional District Cum Sessions Court, Ramanathapuram, Ramanathapuram District dated 22.06.2022 till the disposal of Criminal Appeal.

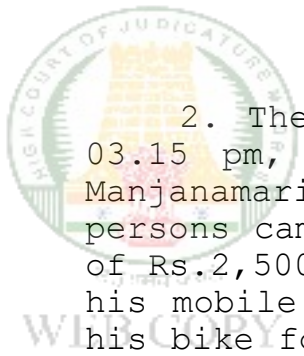
PRAYER IN CRL A(MD).521/2022 :

To admit this appeal on file, to call for the records from the lower court in S.C.No.63/2021 on the file of Additional District Cum Sessions Court, Ramanathapuram, Ramanathapuram District and set aside the judgement dated 22.06.2022 by acquitting the accused and by allowing the Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.RAGAVENTHRE.S, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

Reserved on : 27.04.2023
Delivered on : 12.05.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in S.C.No.63 of 2021, dated 22.06.2022, on the file of the learned Additional District cum Sessions Court, Ramanathapuram, Ramanathapuram District, till the disposal of this Criminal Appeal.



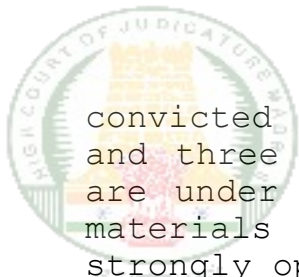
2. The case of the prosecution is that on 03.01.2021 at 03.15 pm, when the defacto complainant was selling blanket near Manjanamariamman Temple, Thiruvalluvar Nagar in his bike, some persons came to that place in bikes waylaid him and had taken a sum of Rs.2,500/- from his pocket; that another person has snatched away his mobile phone and that the accused have taken six blankets from his bike forcibly and that while the complainant had shouted, P.W.2 to P.W.4, who were there in that place had chased the above said persons and apprehended two of them and that on the basis of the complaint, lodged FIR came to be registered in Crime No.5 of 2021 for the offence under Section 395 IPC. After completing the investigation, the respondent has laid the charge sheet against seven persons, including the petitioner and the case was taken on file in P.R.C.No.4 of 2021 and subsequently, the case was committed to the Principal Sessions Court, Ramanathapuram and the same was taken on file in S.C.No.63 of 2021 and that therefore, the case was made over to the Additional District cum Sessions Court, Ramanathapuram.

3. During the trial, the prosecution has examined 9 witnesses as P.W.1 to P.W.9 and exhibited 10 documents as Ex.P.1 to Ex.P.28 and marked three material objects as M.O.1 to M.O.3. The accused has adduced neither oral nor documentary evidence.

4. The learned Principal Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 22.06.2022 convicting the petitioner/accused for the offence under Section 392 IPC and sentenced him to undergo four years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo one month simple Imprisonment and acquitted the other accused. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that though the prosecution has laid the charge sheet against seven persons, the trial Court has come to the conclusion that the petitioner alone was involved in the occurrence; that the trial Court has partly disbelieved the evidence of P.W.7; that the benefit of doubt given to the other accused ought to have been given to the petitioner also; that the trial Court has failed to consider the defence of the petitioner/accused; that Ex.P.6 is concocted document and that since the petitioner is in prison from 22.06.2022, he may be granted the relief of suspension of sentence.

6. The learned Government Advocate (Criminal Side) appearing for the State would submit that the grounds raised by the petitioner are vague and unreasonable; that the respondent has proved the case of the prosecution beyond any reasonable doubt; that the trial Court



convicted the accused; that the petitioner is a habitual offender and three cases are pending against him, which includes two cases are under NDPS Act. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

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7. The learned counsel for the petitioner would submit that in the case registered by the Kenikarai Police Station in Crime No.772 of 2022 under NDPS Act against five persons, including the petitioner, after full fledged trial, the Special Court, Pudukkottai has passed the judgment dated 28.03.2023 acquitting all the accused including the petitioner. He would further submit that the Ramanathapuram Town Police has registered another case in Crime No.308 of 2020, by alleging that 1.150 kg of contraband was recovered from him and that the above case came to be foisted falsely against the petitioner.

8. The learned counsel for the petitioner would also submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that the petitioner has already paid fine amount.

9. As rightly pointed out by the learned counsel for the petitioner, in the list of cases submitted by the prosecution, which are pending against the petitioner/accused, the second case is the case on hand and that one NDPS case he has already been acquitted.

10. This Court has carefully considered the rival contentions putforth by either side and also perused the materials available on record.

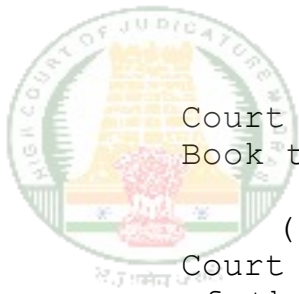
11. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

12. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute 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 learned Judicial Magistrate No.II, Ramanathapuram;

(ii) The sureties shall affix their photographs and

<https://www.mhc.tn.gov.in/> Thumb Impression in the surety bond and the trial



Court may obtain a copy of their Aadhar card or Bank Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court on all working days at 10.30 a.m., till the disposal of the 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.

sd/-

12/05/2023

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12/05/2023

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

das

TO

- 1 THE ADDITIONAL DISTRICT CUM SESSIONS JUDGE,
RAMANATHAPURAM DISTRICT.
 - 2 THE JUDICIAL MAGISTRATE NO.II, RAMANATHAPURAM DISTRICT.
 - 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
 - 4 THE INSPECTOR OF POLICE, KENIKARAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
 - 5 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
 - 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-7353[I] dated 12/05/2023)

ORDER

IN

CRL MP(MD) No.5963 of 2023

IN

CRL A(MD) No.521 of 2022

Date :12/05/2023

RS/VS/SAR- (12.05.2023) 4P 8C