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

Thursday, the Twenty Seventh day of April Two Thousand and Twenty
Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6668 of 2023
in
CRL RC(MD)No.50 of 2023

SORNAPANDI

... PETITIONER/REVISION PETITIONER

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
PERUMALPURAM POLICE STATION,
TIRUNELVELI DISTRICT.
(CRIME NO.960/2005).

... RESPONDENT/REVISION RESPONDENT

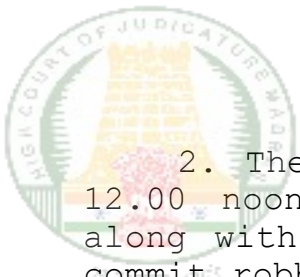
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspense the sentence by granting bail in Crl.A.No.58/2017 dt.9/12/2022 on the file the learned IIIrd Additional Sessions Court, Tirunelveli in SC.317/2008 dt.24/8/2017 on the file of the Learned Principal Assistant Sessions Court, Tirunelveli till the disposal of the criminal revision.

Prayer in CRL RC(MD). 50/ 2023 :

To call for the records from the lower court and duly set aside the judgment passed by the learned III Additional Sessions Court, Tirunelveli District in Crl.A.No.58 of 2017 dated 09.12.2022 in S.C.No.317 of 2008 dated 24.08.2017 on the file of the learned Principal Assistant Sessions Court, Tirunelveli District and duly set aside the same.

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.PRABHU K, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(Crl.side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/first accused by the learned Principal Assistant Sessions Judge, Tirunelveli, in S.C.No.317 of 2008, dated 24.08.2017, which was modified by the learned III Additional District and Sessions Judge, Tirunelveli, in Crl.A.No.58 of 2017, dated 09.12.2022, till the disposal of this Criminal Revision.



2. The case of the prosecution is that on 23.09.2005 at about 12.00 noon, the petitioner/first accused and the second accused along with the third accused with knives and with an intention to commit robbery trespassed into the house of the defacto complainant Bhagavathi and by showing knives threatened her and robbed gold ornaments and also caused injuries.

3. On the basis of the complaint lodged, FIR came to be registered in Crime No.960 of 2005 against three persons for the offences under Sections 394 r/w 397 IPC.

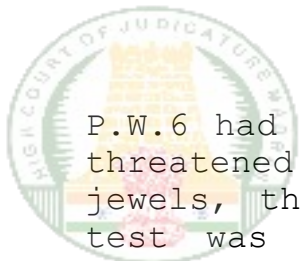
4. The respondent police, after completing the investigation, has filed the charge sheet for the offences under Sections 448, 394, 397 r/w 34 IPC.

5. During trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13, exhibited 14 documents as Ex.P.1 to Ex.P.14 and marked 5 material objects as M.O.1 to M.O.5. The defence have adduced neither oral nor documentary evidence.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 24.08.2017 convicting the petitioner and the second accused for the offences under Sections 448 and 394 IPC and sentenced them to undergo 1 month Simple Imprisonment for the offence under Section 448 IPC and sentenced them to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo 3 months Rigorous Imprisonment each for the offence under Section 394 IPC and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner/ first accused has preferred an appeal in C.A.No.58 of 2017 and the learned III Additional District and Sessions Judge, Tirunelveli, upon considering the evidence available on record and on hearing the arguments of both the sides, has passed the impugned judgment dated 09.12.2022 confirming the conviction and reduced the imprisonment period from 5 years to 3 years. Challenging the above judgment of conviction and sentence, the first accused has come forward with the present revision.

7. No doubt, the petitioner's earlier application for suspension of sentence was ordered to be dismissed by this Court vide order dated 31.01.2023.

8. The learned counsel appearing for the petitioner would submit that originally FIR was registered against two unknown persons, as if, they forcibly robbed the gold ornaments of P.W.1, that even according to the prosecution, the occurrence was held on 23.09.2005 and further on 23.12.2006, the second accused was arrested on suspicious manner, that based on the confession of the second accused, the petitioner has been roped in this case, that



P.W.6 had turned hostile, that P.W.8 disclosed that the police had threatened the said witness by compelling him to return back the jewels, that the accused persons were arrested on 23.12.2006, but test was conducted on 08.01.2007, that the evidence of P.W.11 disclosed that the finger prints had been taken from the accused persons, but both the finger prints reports have not been exhibited and that the above application is the second application for bail.

9. As rightly contended by the learned Government Advocate (Criminal Side) appearing for the respondent, the above petition came to be filed in the Criminal Revision and not in Criminal Appeal.

10. As rightly contended by the learned Government Advocate (Criminal Side) appearing for the respondent, the petitioner and other accused by showing knife and pressing the same in the neck region, committed the robbery of the gold chain and apart from that, they have also robbed the gold jewels kept in the bureau.

11. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and also taking note of the incarceration period, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

12. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-

27/04/2023

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/05/2023

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

CSM

TO

- 1 THE III ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI DISTRICT.
- 2 THE PRINCIPAL ASSISTANT
SESSIONS JUDGE, TIRUNELVELI DISTRICT.
- 3 THE INSPECTOR OF POLICE
PERUMALPURAM POLICE STATION, TIRUNELVELI DISTRICT.
- 4 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.



5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

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ORDER
IN
CRL MP (MD) No.6668 of 2023
in
CRL RC (MD) No.50 of 2023
Date :27/04/2023

SS/MMS/SAR III/17/05/2023/4P/6C