



CRL.MP(MD)No.17902 of 2023

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

Tuesday, the Nineteenth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.SUNDAR
and
The Hon`ble Mr.Justice R. SAKTHIVEL

CRL.MP(MD)No.17902 of 2023
in
CRL.A(MD)No.1114 of 2023

AMIRTHAVALLI

...APPELLANT/ACCUSED NO.2

Vs

THE INSPECTOR OF POLICE
THIRUNEELAKUDI POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.148/2019.

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed by the Learned SC No.95/2020 on the file of the Learned Additional District Sessions Judge and Fast Track Court, Kumbakonam in SC No.95/2020 dt.22.11.2022 and enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.

Prayer in CRL.A(MD)No.1114 of 2023:

To call for entire records connected to the Judgment in S.C.No.95 of 2020 dated 22.11.2023 on the file of Learned Additional District Sessions Judge(Fast Track Court), Kumbakonam and set aside the conviction and sentence imposed against the appellant.



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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.P.KARTHICK, Advocate for the petitioner and of MR.A.THIRUVADIKUMAR, Additional Public Prosecutor, on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'Criminal Miscellaneous Petition' [hereinafter 'Crl.M.P' for the sake of brevity] has been filed under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] with a prayer for suspension of sentence pending appeal. To be noted, main appeal is directed against judgment and sentence in S.C.No.95 of 2020 [Crime No.148 of 2019 on the file of Thiruneelakudi Police Station, Thanjavur District] on the file of 'Additional District and Sessions Judge's Court [Fast Track Court], Kumbakonam', which shall hereinafter be referred to as 'trial Court' for the sake of convenience and clarity.

2. Petitioner in Crl.M.P. is A2 in the trial Court.

3. On a perusal of impugned judgment and sentence, we find that A2 has been convicted qua an offence under Section 324 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity]. A careful perusal of the language in which the



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first proviso to Section 389(1) of Cr.P.C is couched makes it clear that first proviso to Section 389(1) of Cr.P.C will be applicable only to persons who have been convicted of an offence punishable with (a) death; or (b) imprisonment for life; or (c) imprisonment for a term of not less than 10 years. In the case on hand, the petitioner who is A2 in the trial Court has been convicted of an offence under Section 324 IPC [voluntarily causing hurt by dangerous weapon or means] which entails a maximum punishment of three years or fine or both. We make it clear that first proviso to Section 389(1) Cr.P.C. is offence-centric or in other words, it is conviction provision-centric and it is not sentence-centric. As a contra illustration, assuming for a moment if a petitioner has been convicted of an offence under Section 307 IPC but given a sentence of only three years or any other sentence less than 10 years, first proviso to Section 389 would still apply as Section 307 IPC entails life imprisonment as maximum sentence.

4. Reverting to the case on hand, adverting to paragraph 22 of the support affidavit, Mr.P.Karthick, learned counsel for petitioner / appellant submits that the trial Court suspended the sentence for a period of thirty days vide Crl.M.P.No.116 of 2023. Learned counsel submits that order in Crl.M.P.No.116 of 2023 has not been uploaded. Therefore, we went into the Official Website of the District Court i.e., E-

<https://www.mhc.tn.gov.in/judis>



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Courts Website and verified. We find that proceedings in Crl.M.P.No.116 of 2023, more particularly, proceedings dated 22.11.2023 has been uploaded. A scanned reproduction of dashboard and daily status are as follows:

Filing Number	215/2023	Filing Date	22-11-2023
Registration Number	116/2023	Registration Date:	22-11-2023
CNR Number	TNTJ170007602023 (Note the CNR number for future reference)		View QR Code / Cause Title
Case Status			
First Hearing Date	22nd November 2023		
Next Hearing Date	22nd December 2023		
Case Stage	For further Proceedings		
Court Number and Judge	1-Additional District Judge,(FTC) . Kumbakonam		
Petitioner and Advocate			
1) Amirthavalli Advocate- A.S Karikaian			
Respondent and Advocate			
1) State by SI of police, Thirunelakudi Police station			
Acts			
Under Act(s)	Under Section(s)		
CODE OF CRIMINAL PROCEDURE, 1973	389(2)		
Case History			
Judge	Business on Date	Hearing Date	Purpose of Hearing
Additional District Judge,(FTC) . Kumbakonam	22-11-2023	22-12-2023	For further Proceedings

Daily Status

Additional District Court, Kumbakonam
In the court of : Additional District Judge,(FTC) , Kumbakonam
CNR Number : TNTJ170007602023
Case Number : CRLMP/0000116/2023
Amirthavalli -versus- State by SI of police, Thirunelakudi Police station
Date : 22-11-2023

Business	: This petition is allowed and the sentence imposed on the petitioner/accused will be suspended till 22.12.2023 on producing two sureties for the like sum Rs.10,000/- each and on her bond. Sureties are produced and accepted. The sentence imposed on the 2nd accused is suspended till 22.12.2023.
Next Purpose	: For further Proceedings
Next Hearing Date	: 22-12-2023

Additional District Judge,(FTC) , Kumbakonam



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Ideally, the aforementioned proceedings uploaded in the E-Courts Website should have been brought to our notice rather than saying that it has not been uploaded. This is more so as there is nothing to demonstrate that the petitioner / appellant has applied for a certified copy of order dated 22.11.2023 in CrI.M.P.No.116 of 2023

6. Be that as it may, as first proviso to sub-section (1) of Section 389 of Cr.P.C., does not operate, we thought it fit to hear [oral submissions of] Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor who accepted notice for respondent State.

7. Learned Prosecutor very fairly submitted that there is no dispute about suspension of sentence by the trial Court and there is no objection with regard to this Court granting suspension of sentence. This submission is recorded.

8. In the light of the narrative thus far, the sentence imposed qua the petitioner / appellant [Mrs.Amirthavalli wife of Thiru.Mooventhiran] who is A2 in the trial Court vide S.C.No.95 of 2020 on the file of Additional District and Sessions Judge's Court [Fast Track Court], Kumbakonam, is suspended pending appeal subject to petitioner furnishing two sureties each for a like sum of Rs.10,000/-



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[Rupees Ten Thousand only] [one surety should be a blood relative] to the satisfaction of the trial Court.

9. This Court is informed that fine amount of Rs.2,000/- has already been paid by the petitioner / appellant. This submission is also recorded. To be noted, receipt bearing A No.201852 dated 22.11.2023 has been annexed to demonstrate that fine amount has been paid.

10. Captioned Crl.M.P is disposed of as above.

sd/-
19/12/2023

/ TRUE COPY /

21/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1. THE ADDITIONAL DISTRICT SESSIONS JUDGE(FAST TRACK COURT),
KUMBAKONAM
- 2.THE INSPECTOR OF POLICE
THIRUNEELAKUDI POLICE STATION,
THANJAVUR DISTRICT.



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

COPY TO

THE SECTION OFFICER,
V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.P.KARTHICK, Advocate (SR-18041[I] dated 20/12/2023)

ORDER
IN
CRL.MP(MD)No.17902 of 2023
in
CRL.A(MD)No.1114 of 2023
Date :19/12/2023

RK/(21/12/2023) 7P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
17/07/2023