



WEB COPY

CrI.M.P.No.4566 of 2022 in CrI.RC.No.444 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

CrI.M.P.No.4566 of 2022

in

CrI.RC.No.444 of 2022

Udhayakumar @ Udhaya

... Petitioner

/vs/

State, represented by
the Inspector of Police,
Palladam Police Station,
Tiruppur District
(Crime No.459 of 2016)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under sections 397 (i) of Cr.P.C., praying to suspend the sentence imposed in S.C.No.97 of 2017 on the file of Chief Judicial Magistrate, Tiruppur, Tiruppur District, vide judgment dated 23.02.2018 and the same was confirmed by the Appellate Court in C.A.No.31 of 2018 (On the file of Principal Sessions Judge, Tiruppur) by a judgment dated 16.02.2022.

For Petitioner

... Ms.Amala Anandhi for
Mr.C.S.Saravanan

For Respondent

.... Mr.A.Gopinath,
Govt. Advocate (crl.side)

ORDER



WEB COPY

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed upon the petitioner, by judgment and order dated 16.02.2022 passed in C.A.No.31 of 2018 by the learned Principal Sessions Judge, Tiruppur, by confirming the judgment and sentence dated 23.02.2016 passed in S.C.No.97 of 2017 passed by the learned Chief Judicial Magistrate, Tiruppur and to enlarge the petitioner on bail.

2. The petitioner, who was the A2 in S.C.No.97 of 2017 was convicted and sentenced by the trial court as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A2	U/s.457 of IPC	To undergo 3 years RI and to pay a fine of Rs.1000/-, in default, to undergo further six months SI
	U/s.394, r/w.397 of IPC	To undergo 5 years RI and to pay a fine of Rs.1000/-, in default, to undergo further six months SI

The substantive sentence of imprisonments are ordered to run concurrently

The judgment of conviction and sentence imposed on the petitioner by the trial court was confirmed by the learned Principal Sessions Judge, Tiruppur



in C.A.No.31 of 2018, dated 16.02.2022. Challenging the above conviction and sentence, the petitioner has filed Crl.R.C. along with the instant miscellaneous petition, seeking suspension of sentence and bail.

3. The learned counsel for the petitioner submitted that the trial court and lower appellate court have failed to take the fact into consideration that PW10 and PW11 did not produce any Forensic Report regarding finger prints. In the light of the above infirmities and discrepancies in the evidence of the prosecution witnesses for the alleged seizure and recovery of material objects and failure to produce the report of finger prints found in the scene of occurrence, it is highly unsafe to place reliance on those evidences to invoke presumption against the revision petitioner. It was further argued that the learned trial court as well as appellate court also failed to notice the discrepancies in the deposition of witnesses and the crystal part of the evidences was not at all assessed by both the courts below. It was further argued that the judgment passed by both the courts below was based on surmises and conjectures without considering the entire evidence on record.

4. It was further argued that due to pendency of the criminal cases before this High Court, there is a blinking chance that in the near future, this



appeal will be finally heard and decided. She further submit that there are arguable points in this Revision and the petitioner has fair chance of success in this Criminal Revision Case. Thus, she prayed for suspension of sentence till the disposal of this Criminal Revision Petition.

5. Several other submissions in order to demonstrate the falsity of the allegations made against the Revision petitioner have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the revision petitioner that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The revision petitioner undertakes that in case he is released on bail, he will not misuse the liberty of bail and will cooperate in disposal of revision.

6. Learned Govt. Advocate (crl.side) appearing for the respondent has opposed the argument advanced by the learned counsel for the Revision Petitioner and submits that the judgments passed by the courts below are as per the law after considering the entire evidence, thus the relief sought by the



Revision Petitioner at this stage be refused by this Court.

WEB COPY

7. Considering the arguments advanced by the learned counsel for the petitioner as well as the learned Govt. Advocate (crl.side), this court is of the view that the trial court has failed to appreciate the evidence on record and the judgment was passed without considering the entire materials placed before it and during trial the Revision petitioner was also on bail.

8. Further, it is observed that when the accused have been under incarceration for sometime and when there are points in the revision, which favour the accused, then the courts should not shy from granting suspension of sentence, as the liberty of the individual would be at stake if the revision results in acquittal at a later point of time. In this regard, the decision of the Hon'ble Supreme Court of India in the case of ***Rabi Prakash Vs. The State of Odhisha reported in 2023 Live Law (SC) 533*** is of relevance.

9. The petitioner has raised substantial grounds in the Revision which require detailed appraisal. Further, the Revision is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the Revision petitioner is entitled to the relief of suspension of sentence and



WEB COPY



10. Accordingly, the relief of suspension of sentence and bail is granted to Revision Petitioner namely Udhayakumar @ Udhaya, S/o.Subramani on the following conditions:

- (i) The Revision petitioner shall surrender before the Chief Judicial Magistrate, Tiruppur within three weeks from the date of receipt of a copy of this order and on such surrender, the revision petitioner is ordered to be released on bail on his executing a personal bond along with two sureties for a sum of Rs.15,000/- each subject to furnishing undertaking that he will co-operate in the hearing of the present Revision.
- (ii) The Revision petitioner and sureties shall affix their photographs and Left Thumb Impression in the bond and the abovesaid Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;
- (iii) The realization of fine shall also remain suspended during the pendency of the present Revision.



11. On acceptance of his bail bonds and sureties, the learned trial court shall transmit photostat copies thereof to this Court for being kept on records of this Revision.

12. With the above directions, this Criminal Miscellaneous Petition is ordered.

01.10.2024

msr

To

1. The Chief Judicial Magistrate, Tiruppur
2. The Principal Sessions Judge, Tiruppur
3. The Inspector of Police,
Palladam Police Station,
Tiruppur District



WEB COPY



Crl.M.P.No.4566 of 2022 in Crl.RC.No.444 of 2022

SHAMIM AHMED, J.

msr

Crl.M.P.No.4566 of 2022
in
Crl.RC.No.444 of 2022

01.10.2024