



CRL.M.P(MD).No.2838 of 2024

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

Monday, the Eighteenth day of November Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL.M.P(MD).No.2838 of 2024

in

CRL.R.C(MD)No.1230 of 2023

SIVA @ SIVARAMALINGAM @ PERIYAVAN,

... Revision Petitioner/
Accused No. 2

Vs

THE INSPECTOR OF POLICE
AMBASAMUDIRAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.85 OF 2016.

... Respondent / Complainant

Criminal Miscellaneous 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 on Revision Petitioner/Appellant/Accused No.2 namely Siva@Sivaramalingam@Periyavan Crl.A.No.95 of 2019 dt.14.8.2023 by which the judgement of conviction dt.21.8.2019 passed in SC.No.460 of 2016 by this learned Assistant Sessions Judge, Ambasamudiram and enlarge the revision petitioner on bail, pending disposal of this Criminal Revision.

Prayer in CRL RC(MD). 1230/ 2023 :

To call for the records pertaining to the order passed by the Learned III Additional District Judge, Tirunelveli in Crl.A No.95/2019 dt.14.08.2023 by which the judgment of conviction dt.21.08.2019 passed in SC No.460/2016 by the learned Assistant Sessions Judge, Ambasamudiram has been upheld by dismissing the aforesaid appeal and consequently confirming the conviction of the revision petitioner and to set aside the same as illegal.

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Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/s.K.SUYAMBULINGABHARATHI, Advocate for the petitioner and Mr.M.VAIKKAM KARUNANITHI, Government Advocate for the respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed against the petitioner by the learned Assistant Sessions Judge, Ambasamudram in S.C.No.460 of 2016, dated 21.08.2019, which was confirmed in Criminal Appeal No.95 of 2019, dated 14.08.2023, by the learned III Additional District and Sessions Judge, Tirunelveli, and to enlarge him on bail till the disposal of the Criminal Revision Case in CrI.R.C.(MD)No.1230 of 2023.

2. The brief facts of the prosecution case :

The petitioner/accused is the 2nd accused in this case. The petitioner/ A2 and co-accused/ A1 were charged for the offence under Section 397 of IPC alleging that on 25.03.2016 at about 7.00 a.m., the petitioner/ A2 had armed with a sickle, and had waylaid and robbed 50 gram gold chain from P.W.1/Chellapandi at occurrence place. The case was conducted before the learned Assistant Sessions Judge, Ambasamudram and after hearing both, the petitioner/ A2 was found guilty of the charge, and convicted and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 397 of IPC by way of a



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judgment dated 21.08.2019. The petitioner/A2 preferred an appeal in C.A.No.95 of 2019 before the III Additional District and Sessions Court, Tirunelveli, and the said appeal was dismissed on 14.08.2023 confirming the conviction and sentence of the trial Court.

3. Being dissatisfied with the said conviction and sentence, the petitioner/A2 has preferred the present Criminal Revision Case before this Court. The petitioner/A2 filed a petition in CrI.M.P.(MD)No.15609 of 2023 seeking suspension of sentence and the same was dismissed by this Court on 10.01.2024. Now, the petitioner/A2 has come up before this Court with the second application seeking suspension of sentence.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.

5. The learned counsel for the petitioner/A2 has submitted that the petitioner/A2 has been falsely implicated in this case. The alleged deadly weapon was not marked by the prosecution. Further, the alleged deadly weapon was seized only from the 1st accused and not from the petitioner/A2. P.W.1 was called two times for identification parade. On 25.04.2016, P.W.1 identified the 1st accused/Baskar, and on 27.05.2016, P.W.1 identified the petitioner/A2. As per the evidence of P.W.1, after the arrest of the accused, they were shown to witnesses and subsequently,



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identification parade was conducted. It is invalid in the eye of law as per the decision reported in **2023 Live Law (SC) 617**. There is no corroboration among the evidence of prosecution witnesses. Since the petitioner was implicated as an accused in some cases previously, the petitioner was also arrayed as an accused in the present case. The petitioner is the only breadwinner of his family, and is in custody for more than 455 days. The petitioner has a fair chance of succeed in this revision. Further, the learned counsel for the petitioner submitted that the petitioner's own brother's marriage is going to be held on 20.11.2024. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Government Advocate (Criminal Side) would submit that this is the second application, seeking suspension of sentence, filed by the petitioner. Already, the petitioner had moved an application, seeking suspension of sentence, before this Court and the same was dismissed on 10.01.2024 in Crl.M.P. (MD) No.15609 of 2023. P.W.1 to P.W.3, who are the ocular witnesses, clearly deposed that the petitioner/A2 along with the 1st accused came in two wheeler by asking an address and robbed 50 gram gold chain from P.W.1 by showing "aruval" during day time. The petitioner is a habitual offender, and is having several cases. The gravity of offence committed by the petitioner has to be looked in this case. Further, he conceded to the fact that the petitioner's own brother's marriage is going



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to be held on 20.11.2024. However, he strongly opposed to grant suspension of sentence and bail to the petitioner.

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7. On hearing the rival arguments on both the sides, and on perusal of the records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence, mainly, that the accused were shown to witnesses after arrest, then only the identification parade was conducted, which is an invalid one.

8. Further, the learned counsel for the petitioner contended that no weapon was recovered from the petitioner/A2, and has pointed out that there are certain infirmities and inconsistencies in this case, and also there are certain contradictions in material particulars.

9. Considering the fact that there are arguable points involved in this criminal revision and further, the criminal revision is not likely to be taken up for final hearing in the near future, and considering the period of incarceration suffered by the petitioner, and also considering the fact that there is change in circumstances, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, this petition is allowed, and the substantive sentence of



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imprisonment alone is suspended pending disposal of the revision with the following

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directions :

(i) The petitioner is directed to be enlarged on bail on condition that 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 Assistant Sessions Judge, Ambasamudram.

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the trial Court once in a week i.e., on every Monday at 10.30 a.m., until further orders.

sd/-
18/11/2024

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18 / 11 / 2024

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

MKN

TO

1 THE ASSISTANT SESSIONS JUDGE, AMBASAMUDRAM

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2 THE III ADDITIONAL DISTRICT JUDGE, TIRUNELVELI,

3 THE INSPECTOR OF POLICE
AMBASAMUDIRAM POLICE STATION, TIRUNELVELI DISTRICT.

4. THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

+2 CC to M/s.K.SUYAMBULINGA BHARATHI, Advocate (SR-14151[I] dated
18/11/2024)

ORDER
IN
CRL MP(MD) No.2838 of 2024
in
CRL.R.C(MD)No.1230 of 2023
Date :18/11/2024

PSP/ /SAR /18.11.2024/ 7P/8C

Madurai Bench of Madras High Court is issuing certified
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