



CRL MP(MD) No.15609 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Wednesday, the Tenth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15609 of 2023
IN
CRL RC(MD) No.1230 of 2023

SIVA @ SIVARAMALINGAM @ PERIYAVAN,
... REVISION PETITIONER/ ACCUSED

Vs

THE INSPECTOR OF POLICE
AMBASAMUDIRAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.85/2016. ... 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 namely, Siva @ Sivaramalingam @ Periyavan Crl A No.95/2019 dated 14.08.2023 by which the judgment of conviction dated 21.08.2019 passed in SC No.460/2016 by the 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.SUYAMBULINGA BHARATHI.K, Advocate for the petitioner and of Mr.S.MANIKANDAN, Government Advocate(Crl.side) on behalf of the Respondent while admitting the Criminal Revision Petition.,, the Court made the following order:-

Reserved on : 20.12.2023

Pronounced on : 10.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 14.08.2023 made in C.A.No.95 of 2019 by the learned III Additional District and Sessions Judge, Tirunelveli, confirming the conviction and sentence passed in S.C.No.460 of 2016 on the file of the learned Assistant Sessions Judge, Ambasamudiram dated 21.08.2019 and to enlarge him on bail till the disposal of the Criminal Revision.

2.The brief facts of the prosecution case:

The petitioner/accused is Accused No.2 in this Case. The petitioner/Accused No.2 and co-accused/Accused No.1 were charged for the offence under Section 397 of IPC alleging that on 25.03.2016 at about 7.00 a.m. the petitioner/accused armed with sickle waylaid and robbed 50 gram gold chain from P.W.1/Chellapandi at occurrence place. The case was conducted before the learned Assistant Sessions



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Judge, Ambasamudiram and after hearing both, the petitioner/accused 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 judgment dated 21.08.2019. The petitioner/accused preferred appeal in C.A.No.95 of 2019 before the III Additional District and Sessions Court, Tirunelveli and the appeal was dismissed on 14.08.2023 confirming the conviction and sentence of the trial Court.

3. Aggrieved by the conviction judgment of both lower Courts, the petitioner/Accused No.2 has preferred the present Criminal Revision Case before this Court. Along with the revision, the petitioner has filed this petition seeking for suspension of sentence and for bail pending disposal of the criminal revision.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent.

5. The learned counsel for the petitioner/ Accused No.2 has submitted that the petitioner/ Accused No.2 was falsely implicated in this case. The alleged weapon



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was not marked by the prosecution. Further the alleged weapon was seized from Accused No.1 and not from the petitioner/ Accused No.2. P.W.1 was called two times for identification parade, on 25.04.2016 P.W.1 identified the accused Baskar and on 27.05.2016, P.W.1 identified the petitioner/ Accused No.2. As per evidence of P.W.1 after arrest of the accused, they were shown to witnesses and subsequently identification parade was conducted. It is invalid in the eye of law as per decision reported in **2023 Live Law (SC) 617**. There is no corroboration among the evidence of prosecution witnesses. Since the petitioner was implicated in previous cases, the petitioner was also arrayed as accused in this case. The petitioner is in custody for more than five months. These facts are not considered by the Courts below. The petitioner is the only breadwinner of his family. The petitioner has a fair chance of succeed in this revision. 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 the P.W.1 to P.W.3 who are ocular witnesses clearly deposed that the petitioner/ Accused No.2 along with Accused No.1 came in two wheeler by asking an address robbed 50 gram gold chain from P..W.1 by showing aruval during day time. As the occurrence took place during day time, they identified the accused.



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The petitioner is a habitual offender and he is having more than 17 cases including two murder cases and three SC/ST cases. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

7. On hearing both side rival arguments and on perusal of 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 and then identification parade was conducted which is invalid one. Further it is contended that weapon was not recovered from the petitioner/accused. However, these are to be decided while deciding the criminal revision on merits.

8. The petitioner/Accused No.2 has 17 previous cases including two murder cases and three SC/ST cases and this was not disputed by the petitioner. Considering the bad antecedents of the petitioner/Accused No.2 and gravity of offence involved in this criminal revision, this Court is not inclined to consider the relief sought in this petition and holds that the petitioner is not entitled for the relief of suspension of sentence.



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

sd/-

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Sub-Assistant Registrar

(C.S. I / II / III / IV)

Madurai Bench of Madras High Court,

Madurai - 625 023.

VSD

TO

- 1 THE III ADDITIONAL DISTRICT JUDGE,
TIRUNELVELI.
- 2 THE ASSISTANT SESSIONS JUDGE,
AMBASAMUDIRAM.
- 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.



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COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.(CALL FOR RECORDS)

ORDER
IN
CRL MP(MD) No.15609 of 2023
IN
CRL RC(MD) No.1230 of 2023
Date :10/01/2024

SS/DD/SAR- /11/01/2024/7P/7C

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