



CRL MP(MD) No.17946 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the Twelfth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.17946 of 2023

in

CRL RC(MD) No.1420 of 2023

ARULRAJA

... Petitioner / Appellant / Accused

Vs

THE INSPECTOR OF POLICE
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.434 OF 2012.)

... Respondent / 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 Conviction and Sentence imposed in CA.No.40 of 2019 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur dt.3.11.2023 in confirming the judgment made in CC.No.80 of 2013 on the file of the learned Judicial Magistrate Court, Rajapalayam dated 31.01.2019.



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Prayer in CRL RC(MD). 1420/ 2023 :

To call for the records pertaining to the case in CA.No.40 of 2019 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur and CC.No.80 of 2013 on the file of the Learned Judicial Magistrate Court, Rajapalayam and set aside the conviction and sentence passed in C.A.No.40 of 2019 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur dated 03.11.2022 in confirming the judgment made in C.C.No.80 of 2013 on the file of the learned Judicial Magistrate Court, Rajapalayam dated 31.01.2019 and to allow this criminal revision.

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.R.KARUNANIDHI, Advocate for the petitioner and of Mr.K.SANJAY GANDHI, Government Advocate (Crl. side) on behalf of the Respondent, while admitting the criminal revision case, the court made the following order:-

Reserved on : 21.12.2023

Pronounced on : 12.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 03.11.2023 made in C.A.No.40 of 2019 by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, confirming the conviction and sentence passed in C.C.No.80 of 2013 on the file of the learned Judicial Magistrate, Rajapalayam dated 31.01.2019 and to enlarge him on



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bail till the disposal of the Criminal Revision.

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2.The brief facts of the prosecution case:

The petitioner/accused was charged for the offences under Section 392 of IPC alleged that on 27.07.2012 when the defacto complainant Kanaga Jeyalakshmi was going to college by walk near Saratha nagar bus stop, the petitioner threw chilli powder and snatched 20 gram gold chain from her. The case was conducted before the learned Judicial Magistrate, Rajapalayam and after hearing both the petitioner/accused was found guilty of the charge and convicted and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 392 of IPC by way of judgment dated 31.01.2019. The petitioner/accused preferred the appeal in C.A.No.40 of 2019 before the learned Principal District and Sessions Court, Virudhunagar at Srivilliputhur and the appeal was dismissed on 03.11.2023 confirming the conviction and sentence of the trial Court.

3. Aggrieved by the conviction judgment of both lower Courts, the petitioner/accused has preferred the present Criminal Revision before this Court. Along with revision, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the criminal revision.



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Petition.

4. Heard both sides and perused the records in this Criminal Miscellaneous

5. The learned counsel for the petitioner/accused has submitted that the petitioner/accused was falsely implicated in this case. As per the contents of FIR unknown person followed her and snatched the chain. The defacto complainant categorically deposed that she has seen the accused and identified only at Court after the occurrence. There was 3 days delay in FIR. The case is only put up case against the petitioner. The identification of the accused before the trial Court for the first time after the occurrence is not safe. No test identification parade was conducted. The petitioner is in prison. 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. The petitioner is in custody from 04.12.2023. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. In support of his contention the learned counsel for the petitioner/accused relied on decision reported in 2022 Live Law (SC) 582 (Amrik Singh Vs. The State of Punjab).

6. Per contra, the learned Government Advocate (Criminal Side) would submit that the P.W.1 is the ocular witness clearly deposed that the petitioner/accused robbed the gold chain from them during day time. As the occurrence took place



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during day time, they identified the accused. So there is no necessary for a test identification parade. The petitioner is a habitual offender and he is having seven previous cases of this nature. The gravity of offence committed by the petitioner has to be looked in this case. Even at the time of judgment in criminal appeal, the petitioner/accused was absconded and only on execution of NBW, he was secured and so, he 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 that there is three days delay in FIR and further mainly contended that the petitioner/accused was identified by the defacto complainant/PW1 before the trial Court for the first time after the occurrence which is not safe in view of reported judgment in 2022 Live Law (SC) 582 and no test identification parade was conducted by the police for the petitioner/accused. However, these are to be decided while deciding the criminal revision on merits.

8. The petitioner/accused has 7 previous cases and two cases are still pending and this was not disputed by the petitioner. Considering the bad antecedents of the



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petitioner/accused and gravity of offence committed by the petitioner and the petitioner is in custody only from 04.12.2023, 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.

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

sd/-
12/01/2024

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/01/2024
Sub-Assistant Registrar
(C.S. I / II / III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

To

1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.

2.The Judicial Magistrate,
Rajapalayam.

3.Do through the Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur.

4.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.



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5.The Superintendent,
Central Prison, Madurai.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) No.17946 of 2023
in
CRL RC(MD) No.1420 of 2023
Date :12/01/2024

ED/ JGB /SAR- (19/01/2024) 7P / 7C

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