



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

Tuesday, the Nineteenth day of January Two Thousand Sixteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice P.R.SHIVAKUMAR
and
The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) No.18 of 2016
IN
CRL A(MD) No.342 of 2015

MUTHURAJ@MUTHURAMAN

... APPELLANT / ACCUSED No.1

Vs

STATE REPRESENTED BY,
THE INSPECTOR OF POLICE
UTHUMALAI POLICE STATION,
TIRUNELVELI DISTRICT.

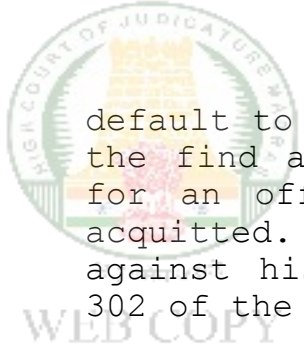
... RESPONDENT / COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the execution of sentence by granting bail in S.C. No.51 of 2013 dated 29.10.2015 on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District till the disposal of the Crl.A.No.342 of 2015.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVEL, Senior Counsel for M/S.K.PRABHU, Advocate for the petitioner and Mr.C.RAMESH, Additional Public Prosecutor for the Respondent and the court made the following order:-

This petition has been filed under Section 389(1) of the Code of Criminal Procedure for the suspension of sentence and the release of the petitioner on bail pending disposal of the above appeal, namely, Crl.A.(MD).No.342 of 2015 preferred against the Judgment of the learned Fourth Additional District and Sessions Judge, Tirunelveli in S.C.No.51 of 2013, dated 29.10.2015 both regarding the conviction and sentence.

2. The petitioner figured as accused No.1 and his father figured as accused No.2. The petitioner [A-1] was convicted for an offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in



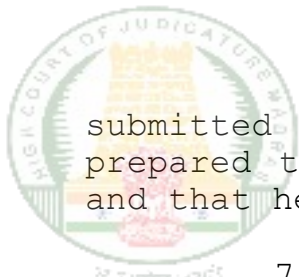
default to undergo rigorous imprisonment for six months. He has paid the find amount. The father of the petitioner, who was prosecuted for an offence under Section 212 of the Indian Penal Code, was acquitted. Hence, the petitioner alone has preferred the appeal against his conviction and sentence for the offence under Section 302 of the Indian Penal Code.

3. Admittedly, the petitioner was on bail during the pendency of trial and he did not violate any of the conditions imposed for his release on bail.

4. Mr.V.Kathirvel, the learned Senior Counsel arguing on behalf of Mr.K.Prabhu, the learned counsel for the petitioner, submits that the name of the petitioner was not mentioned in the complaint and he came to be identified by the prosecution as the person who committed murder of the deceased only based on the evidence of PW-3, whose statement was allegedly recorded after two days. It is the further contention of the learned Senior Counsel that there is no evidence to show how the Investigating Officer got the information that PW-3 knew the occurrence to approach her and get her statement, by which alone the petitioner was implicated. It is the further contention of the learned Senior Counsel that excepting the evidence of PW-3, there is no other piece of evidence to link the petitioner with the death of the deceased and he makes it clear that the above said points are highlighted only for the limited purpose showing that the petitioner has got valid points to be argued in the appeal and that he has got fair chances of success in the appeal.

5. Mr.C.Ramesh, the learned Additional Public Prosecutor in his arguments submits that the evidence of PW-3 is not the only linking piece of evidence and that on the other hand, the confession statement of the petitioner given to the Investigating Officer leading to Section 27 recovery is also there. Be that as it may, the fact remains that the petitioner was fixed as the accused based on the statement of PW-3, which alone led to the alleged recording of the confession statement leading to recovery.

6. The learned Senior Counsel, as a reply to the above said submissions made by the learned Additional Public Prosecutor, submits that the weapon alledgedly recovered pursuant to the statement of the petitioner was not sent to the Forensic Lab to prove the nexus between the death of the deceased and the weapon allegedly recovered based on the information furnished by the petitioner and that though one Ramachandran was projected as an eye-witness as per the final report, he was not examined as a witness for the prosecution and that all these aspects shall be taken into consideration to arrive at a conclusion that there are valid points for the petitioner to urge in his arguments in the appeal. Accordingly, the learned Senior Counsel prays for an order suspending the sentence of life imprisonment [substantive sentence] imposed on the petitioner and his release on bail. It is also



submitted on behalf of the petitioner that the petitioner is prepared to abide any condition that may be imposed by this Court and that he will not flee from justice.

7. We are convinced that the petitioner has got a *prima facie* case and valid grounds to be argued in the appeal and that there is also fair chances of his succeeding in the appeal. The petitioner has got no antecedents of fleeing from justice or violating the conditions for securing his temporary liberty pending trial. We are of the view that the substantive sentence can be suspended and the petitioner can be directed to be released on bail subject to certain conditions.

8. In the result, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner (A-1) alone is suspended and the petitioner shall be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) along with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Tenkasi with a further condition that after such release, the petitioner shall appear before the learned Judicial Magistrate, Tenkasi once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal or until further orders.

sd/-
19/01/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1. THE JUDICIAL MAGISTRATE, TENKASI
 2. THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI DISTRICT
 3. THE INSPECTOR OF POLICE,
UTHUMALAI POLICE STATION, TIRUNELVELI DISTRICT.
 4. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
 5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S K.PRABHU Advocate SR.No.2815

ORDER IN
CRL MP(MD) No.18 of 2016 IN
CRL A(MD) No.342 of 2015
Date :19/01/2016