



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

Monday, the Nineteenth day of September Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and

The Hon`ble Mr.Justice M.V.MURALIDARAN

CRL MP(MD) No.4001 of 2016

IN

CRL A(MD) No.166 of 2016

1 BALA @ BALAMURUGAN
2 JEYAKUMAR

...APPELLANTS/ACCUSED Nos.1 and 2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
B-3 THEPPAKULAM (L&O) POLICE STATION,
MADURAI DISTRICT.
(CRIME NO. 365/2014)

... RESPONDENT/COMPLAINANT.

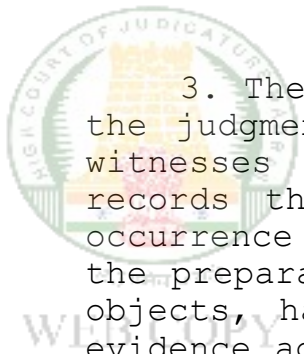
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the Execution of sentence by granting bail in S.C.No. 274/2015 dated 31.03.2016 by the learned Vth Additional District and Sessions Judge, Madurai, Madurai District till the disposal of the Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S K.PRABHU, Advocate for the petitioner and of M/S.A.RAMAR, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by S.NAGAMUTHU, J)

The petitioners/appellants are accused 1 and 2 in S.C.No.274 of 2015 on the file of learned V Additional District and Sessions Judge, Madurai. They stood charged for offences under Sections 341, 302 r/w 34 and 506(ii) IPC. By judgment dated 31.03.2016, the trial Court convicted them under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for one month. The trial Court acquitted them from the charges under Sections 341 and 506(ii) IPC. Challenging the said conviction as well as sentence imposed, the petitioners have come up with this appeal. Pending appeal, they seek suspension of the substantive sentence of imprisonment imposed on them.

2. We have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.



3. The learned counsel for the petitioners has taken us through the judgment of the trial Court and the deposition of all the 20 witnesses examined before the trial Court. It is seen from the records that all the eye witnesses examined to speak about the occurrence have turned hostile. The other witnesses to speak about the preparation of observation mahazar and the recovery of material objects, have also turned hostile. Thus, absolutely, there is no evidence against the accused to prove that they caused the death of the deceased. But curiously, in Paragraph No.40 of the judgment, the trial Court has held as follows:

"40.The prosecution case is that all the accused with a common intention to murder Manikandan on 24.04.2014 at 8.00 p.m. Chellapandi with Aruval A1 Bala @ Balamurugan with sword and QA2 Jayakumar with dagger attacked and inflicted injuries on Manikandan @ Abbas Mani. That aspect has been proved through the evidence of P.W.20 the investigating Officer. Moreover there was clinching evidence with regard to the role and complicity of accused in causing death of deceased in furtherance of the common intention."

4. Referring to the same, the learned counsel would submit that the trial Court has convicted the accused solely based on the evidence of P.W.20 - the Investigating Officer, which is illegal. We find force in the said argument.

5. P.W.20 is not an eye witness to the occurrence. He has spoken only about the investigation done in the case. When all the eye witnesses have turned hostile and they have not stated anything incriminating against all the accused, it is not understandable as to how the trial Court could convict these accused based on the evidence of P.W.20 alone. In our considered view, the conviction of these accused is illegal. Article 21 of the Constitution of India guarantees for the life and personal liberty of the petitioners'and such fundamental right cannot be deprived off without following the procedure established by law. The said procedure includes proof of guilt beyond reasonable doubts. But, the trial Court has convicted the accused based on the evidence of P.W.20 in a callous manner, which cannot be appreciated.

6. In view of the foregoing discussions, we are inclined to suspend the substantive sentence of imprisonment alone imposed on the petitioners pending appeal.

7. Accordingly, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended and the petitioners are directed to be enlarged on bail, on the following conditions:

Each of the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, No.I, Madurai and on further condition that the petitioners shall



report before the concerned Court at 10.30 a.m., on the first working day of every English Calender Month, until further orders.

sd/-

19/09/2016

/ TRUE COPY /

WEB COPY

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE,
MADURAI.

2 DO THRO THE PRINCIPAL SESSIONS JUDGE,
MADURAI.

3 THE JUDICIAL MAGISTRATE NO.1,
MADURAI.

4 DO THRO THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

5 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

6 THE ADDL.PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

7 THE INSPECTOR OF POLICE
B-3 THEPPAKULAM (L&O) POLICE STATION,
MADURAI DISTRICT.

Copy to: 1 THE REGISTRAR (ADMIN) .,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

2 THE SECTION OFFICER,
"B" SECTION
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. C.C. to M/S K.PRABHU Advocate SR.No.53228.

ORDER
IN
CRL MP(MD) No.4001 of 2016
IN
CRL A(MD) No.166 of 2016
Date :19/09/2016