



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

Wednesday, the Seventeenth day of August Two Thousand Sixteen

PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP (MD) No.5611 of 2016
IN
CRL A (MD) No.259 of 2016

VASUKI @ VASINI

... PETITIONER/APPELLANT.

Vs

THE STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
THUCKALAY POLICE STATION,
KANYAKUMARI DISTRICT,
THUCKALAY,
CR NO. 440/2009.

... RESPONDENT/RESPONDENT.

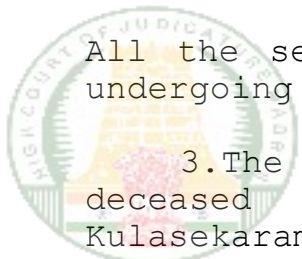
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the execution of the sentence and conviction dated 02.07.2016 passed in S.C. No. 23 of 2010 against the Petitioner by the Mahila Fast Track Court at Nagercoil and enlarge the Petitioner on bail Pending of the above Criminal Appeal.

Order: This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S T.ARUL, Advocate for the petitioner and of MR.P.KANDASAMY, Government Advocate(Crl.Side), on behalf of the Respondent, the court made the following order:-

While challenging her conviction and sentences in S.C.No.23 of 2010, on the file of learned Additional Sessions Judge, Fast Track Mahila Court, Nagercoil, petitioner/A2 seeks appeal bail under Section 389(1) Cr.P.C.

2.The trial Court convicted and sentenced her as under:

Conviction	Sentence
Section 3 of Dowry Prohibition Act	5 years R.I. plus fine Rs.20,000/- i/d 6 months S.I.
Section 4 of Dowry Prohibition Act	2 years S.I. plus fine Rs.10,000/- i/d 3 months S.I.
Section 406 I.P.C.	3 years S.I. plus fine Rs.20,000/- i/d 3 months S.I.
Section 498-A I.P.C.	3 years S.I. plus fine Rs.20,000/- i/d 3 months S.I.
Section 304-B I.P.C.	10 years S.I. plus fine Rs.30,000/- i/d 1½ years R.I.



All the sentences were directed to run concurrently. Now, she is undergoing her sentence in the Special Prison for Women in Trichy.

3.The petitioner/A2's brother A1, namely, Ramesh married deceased Sheeba on 10.11.2008 at Ramakrishna Marriage Hall in Kulasekaram in Kanyakumari District. They have started their matrimonial life in Valliyavillai, Kumarapuram, Kanyakumari District. They were not blessed with any children. Unfortunately, she committed suicide on 22.06.2009 by hanging herself in her said matrimonial home.

4.P.W.1, Chellamuthu Vice - President, Kumarapuram Town Panchayat lodged complaint with the nearby Kotticode Police Station. Initially a case of suspicious death was registered under Section 174 Cr.P.C. After collection of evidence, Section of law was altered to 304-B I.P.C. and other sections.

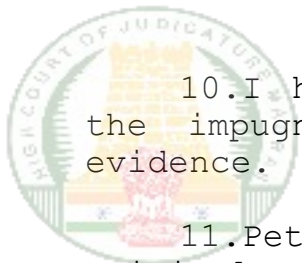
5.The deceased is the daughter of P.W.2. The trial Court concluded that Sheeba has been harassed and was subjected to dowry demand and unable to bear dowry demand, she has committed suicide. The trial Court has also convicted and sentenced A2 as already stated.

6.The learned counsel for the petitioner contended that there is no acceptable incriminating evidence as against A2 to record a conviction. A2, who is the sister of A1 is living at a distance of Kotticode. Very near to the said Police Station Sheeba and A1 resided. Though many allegations of harassment and dowry torture has been made, no complaint has been made to the said Police Station prior to her death. There is evidence of P.Ws.1 and 7 that till death her life was as usual, beautiful and the relationship between spouses was cordial. Except the evidence of the highly interested witnesses, namely, deceased's mother, sister and her other relatives the evidence of other witnesses is not incriminating against the petitioner.

7.The learned counsel for the petitioner further contended that the case against A2 has been cooked up. There is prima-facie case in her favour. Throughout trial Court proceedings she was on bail. She is living with abject poverty. She has no money to pay huge fine amount.

8.In the circumstances, the learned counsel for the petitioner submitted that both her physical sentence as well as fiscal sentence may be suspended and she may be granted appeal bail.

9.The prosecution has filed counter. Besides that, the learned Government Advocate (Criminal side) contended that because Sheeba's family cannot satisfy their dowry demand, which has been made persistently by A2 also and unable to bear her harassment and cruelty Sheeba has taken the extreme step. She has left the world untimely. Her life has gone. There is no prima-facie case in her favour. Based on the evidence she has been rightly convicted and appropriately sentenced.



10.I have anxiously considered the rival submissions, perused the impugned judgment and also referred to relevant piece of evidence.

11.Petitioner/A2 seeks bail pending consideration of her criminal appeal. That is why it is called appeal bail. Such a bail is provided in Section 389 Cr.P.C. In granting appeal bail, the Court should find out whether there is a prima-facie case in favour of the petitioner. It should be gathered from the evidence recorded by the trial Court and the related supporting materials and the gravity of the offence and whether she will abscond.

12.The main allegation as against the petitioner is that she had demanded dowry along with her younger brother.

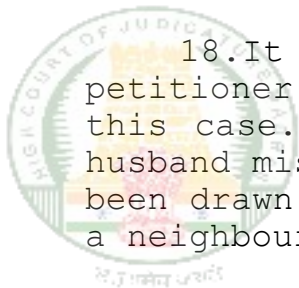
13.The quintessence of an offence under Section 304-B I.P.C. is that the victim should commit suicide or die otherwise than under normal circumstances within 7 years of her marriage and she should have been subjected to dowry torture prior to her committing suicide.

14.The prosecution case is that subsequent to her marriage A2 also had demanded dowry in the form of jewels from the deceased because as it was given to Sheeba's sister. P.W.4 who is a latex extractor cum marriage broker, P.W.5 a relative of the deceased and P.W.10 sister of the deceased have stated that the petitioner had also harassed Sheeba for bringing more dowry from her mother P.W.2.

15.The defence took up the stand that because her sister's husband had misbehaved with her and unable to bear the shame, she has committed suicide.

16.It has been contended by the learned counsel for the petitioner that P.Ws.1 and 7 neighbours of the deceased had stated that the deceased and A1 were carrying on their life as usual and there was complete cordiality between them. Even P.W.2 also would admit as to this aspect. P.W.22, the R.D.O. had stated in her evidence that P.W.2 did not give strong evidence implicating A2. However, it has been contended that both P.Ws.2 and 8 have improved their evidence before the trial Court as there was material contradiction between their statement given to Police under Section 161 Cr.P.C. and their evidence before the trial Court.

17.It has also been contended that though P.W.2 and other witnesses have stated that there was continuous harassment to Sheeba with regard to dowry demand and torture, till her death no complaint was lodged with the Kotticode Police Station, situate very near to her house. It has also been contended that this aspect has also been stated by P.W.1. P.W.1 an important person in the village, who used to mediate matrimonial dispute and if it fails he advise the spouses to go to police. In this case, P.W.1 had admitted that no complaint was lodged with regard to the alleged quarrel between A1 and the deceased.



18.It has also been contended by the learned counsel for petitioner that the petitioner/A2 has been purposely implicated in this case. The defence contention is that Sheeba's elder brother's husband misbehaved with Sheeba. In this connection our attention has been drawn to the evidence of P.W.7. P.W.7 is not a stranger. She is a neighbour.

19.Considering all the above aspects, we find a prima-facie case in favour of the petitioner. Further, throughout the trial Court proceedings she was on bail. Further, there is no allegation that if lent on bail she will abscond or flee away from justice. In the circumstances, I am inclined to grant her appeal bail.

20.Ordered as under:

- (1) Appeal bail granted.
- (2) Her sentence of imprisonment as well as fine are suspended.
- (3) There shall be two sureties, they and the petitioner shall execute a bond for Rs.15,000/- (Rupees Fifteen thousand only) each to the satisfaction of learned Judicial Magistrate, Padmanabhapuram.
- (4) The petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. until further orders.

sd/-

17/08/2016

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

TO

- 1 THE ADDITIONAL SESSIONS JUDGE, FAST TRACK MAHILA COURT, NAGERCOIL.
- 2 DO THRO THE PRINCIPAL SESSIONS JUDGE, KANYAKUMARI AT NAGERCOIL.
- 3 THE JUDICIAL MAGISTRATE, PADMANABHAPURAM.
- 4 DO THRO THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
- 5 THE SUPERINTENDENT, SPECIAL PRISON FOR WOMEN, TRICHY.
- 6 THE DEPUTY SUPERINTENDENT OF POLICE, THUCKALAY POLICE STATION,
KANYAKUMARI DISTRICT.
- 7 THE GOVERNMENT ADVOCATE (CRL.SIDE),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. C.C. to M/S T.ARUL Advocate SR.No.45129.

ORDER
IN
CRL MP (MD) No.5611 of 2016
IN
CRL A (MD) No.259 of 2016
Date :17/08/2016

AM/PV.MPA/SAR-III/18.08.2016/4P/10C