



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

Wednesday, the Twenty First 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.6303 of 2016
IN CRL A(MD) No.276 of 2016

1 K.SUBBURAMAN

2 K.JEYAPPAUL

3 M.BOOMINATHAN

4 A.SATHIESH @ GOVINDARAJ

..PETITIONERS/ACCUSED NOS.1,3 TO 5

Vs.

STATE REP.BY

THE INSPECTOR OF POLICE

PALAYANOOR POLICE STATION,

SIVAGANGAI DISTRICT.

CR NO. 52 OF 2002.

..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 sentence and grant bail to the appellant/accused No.1 and 3 to 5 pending disposal of the Criminal Appeal before this Honourable Court against the judgment in S.C.No.127 of 2007 dated 25.2.2016 on the file of the Sessions Judge Sivagangai in Cr.No.52 of 2002 on the file of the respondent No.1 pending disposal of the 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.LAJAPATHI ROY, Advocate for the petitioner and of Mr.R.RAMACHANDRAN, Addl.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, 3 to 5 in S.C.No.127 of 2007 on the file of learned Sessions Judge, Sivagangai. Totally, there were six accused in the case, out of whom, the accused No.2 (Kumar) and accused No.6 (Pazhanikumar @ Pazhanimuthuvel) died during the pendency of the trial. The trial Court convicted these appellants for offences under Sections 148, 341, 302 read with 34 IPC. The maximum punishment imposed upon them is imprisonment for life. 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. This is a case based on the eye witness account of P.Ws.1 and 2. P.W.1 even in the chief examination has stated that only 3 persons were present including the 2nd accused, who is no more. He has not implicated the others. He has stated that he witnessed the occurrence along with P.W.2 and both of them went to the police station. P.W.2 has stated that he did not go with P.W.1 to the police station at all. He has stated that he came to the place of occurrence only at 5 p.m. ie., long after the occurrence was over. Referring to these circumstances, the learned counsel for the petitioners submitted that the conviction of the appellant, even invoking section 148 of the IPC, is illegal. We find some force in the said argument of the learned counsel for the petitioners.

4. In view of the said anomaly in the case of the prosecution and since we find that there are arguable points, we are inclined to suspend the substantive sentence of imprisonment alone imposed on the petitioners pending appeal.

5. 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, Manamadurai, Sivagangai District 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 Calendar Month, until further orders.

sd/-

21/09/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

- 1 THE SESSIONS JUDGE, SIVAGANGAI.
- 2 -do-thro'THE DISTRICT SESSIONS JUDGE, SIVAGANGAI.
- 3 THE JUDICIAL MAGISTRATE, MANAMADURAI, SIVAGANGAI DISTRICT.
- 4 -do-thro'THE CHIEF JUDICIAL MAGISTRATE, SIVAGANGAI.
- 5 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 6 THE INSPECTOR OF POLICE, PALAYANOR POLICE STATION, SIVAGANGAI DISTRICT.

+1. C.C. to M/S.T.LAJAPATHI ROY Advocate SR.No.54684

ORDER IN

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IN CRL A(MD) No.276 of 2016

Date :21/09/2016