



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

Monday, the Twenty Third day of September Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and
The Hon`ble Mr.Justice M.V.MURALIDARAN

CRL MP(MD) Nos.9044 & 9045 of 2016
IN
CRL A(MD) No.187 of 2016

SRIDHAR ... Petitioner in CRL MP(MD).9044/2016 &
APPELLANT/ACCUSED No.1 IN CRL A(MD)No.187/2016

MOHAMMAD IBRAHIM @ IBRAHIM ... Petitioner in CRL MP(MD).9045/2016
APPELLANT/ACCUSED No.2 IN CRL A(MD)No.187/2016

Vs

THE INSPECTOR OF POLICE
SRIVAIKUNDAM POLICE STATION,
TUTICORIN DISTRICT
(Crime No.67/2014)

... RESPONDENT IN ALL PETITIONS

Prayer in CRL MP(MD). 9044/ 2016 :

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.50/2015 dated 12.02.2016 on the file of Learned II nd Additional Sessions Judge, Tuticorin, Tuticorin.

Prayer in CRL MP(MD). 9045/ 2016 :

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.50/2015 dated 12.02.2016 on the file of Learned II nd Additional Sessions Judge, Tuticorin, Tuticorin distirct.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of



Public Prosecutor on behalf of the Respondent in all petitions and the court made the following order:-

[Order of the Court was made by **S.NAGAMUTHU, J.**]

WEB COPY The petitioners are the accused Nos.1 and 2 in S.C.No.50 of 2015 on the file of the learned Second Additional District and Sessions Judge, Thoothukudi, Thoothukudi District. The Trial Court, vide judgment dated 12.02.2016, has convicted the petitioners for the offence punishable under Section 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for 1 year. Challenging the said conviction and sentence, the petitioners have come up with the present Criminal Appeal. Pending appeal, they seek suspension of sentence.

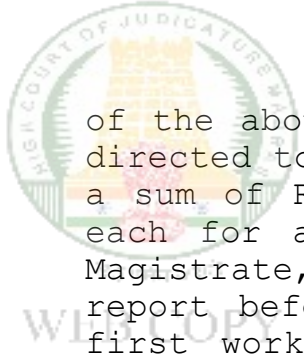
2. We have heard Mr.V.Kathirvelu, learned Senior Counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing on behalf of the State. We have also perused the records carefully.

3. According to the positive case of the prosecution, the alleged occurrence took place at 08.00 a.m., on 09.02.2014. According to the further case of the prosecution, a complaint was made to the police only at 05.00 p.m., on 09.02.2014. The explanation offered by the eye witnesses is that they were in search of the dead body in the Thamirabarani river water. Since they could not find the body, they went to the police station at 05.00 p.m., and made a complaint. But, P.W.5 - the Fire Extinguisher, has stated that on 09.02.2014 at 09.20 a.m. itself, he received the intimation from the respondent police asking him to help them to trace a person, who had gone missing into the Thamirabarani river water. He has further stated that from the morning till the evening, along with a team of officials, he searched for the person who was missing in water. Since the person could not be traced, he stopped the tracing in night hours and on the next day, again, he came at 08.20 a.m., and thereafter, the dead body of the deceased was traced out around 02.00 p.m. Thus, it is crystal clear from the evidence of P.W.5 that on 09.02.2014 before 09.20 a.m., itself, the police had some other information. It is not the earliest information that the deceased was killed by these accused. This creates doubt, the learned Senior Counsel pointed out.

4. In our considered view, there are lot of other arguable points also.

5. Having regard to all the above, this Court is of the view that it is a fit case to grant suspension of sentence.

6. In the result, these petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners/accused Nos.1 and 2 alone is suspended pending disposal



of the above said CrI.A.(MD)No.187 of 2016 and the petitioners are directed to be enlarged on bail on each of them executing 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, Srivaikundam, subject to a condition that they shall report before the Committal Court, once in a month, i.e., on the first working day of every English Calendar month at 10.30 a.m. until further orders.

sd/-
23/09/2019

/ TRUE COPY /

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

TO

- 1 THE JUDICIAL MAGISTRATE, SRIVAIKUNDAM.
 - 2 THE CHIEF JUDICIAL MAGISTRATE, TUTICORIN DISTRICT
 - 3 THE INSPECTOR OF POLICE
SRIVAIKUNDAM POLICE STATION, TUTICORIN DISTRICT
 - 4 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
 - 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
 - 6 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI, THOOTHUKUDI DISTRICT
- +1. C.C. to M/S.K.PRABHU Advocate SR.No.55234

ORDER
IN
CRL MP (MD) Nos.9044 & 9045 of 2016
IN
CRL A (MD) No.187 of 2016
Date :23/09/2019

SML
SH/GSV-PM:27.09.2016:3P/8C