



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

Thursday, the Sixth day of October Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and

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

CRL MP(MD) No.9402 of 2016

IN

CRL A(MD) No.272 of 2016

1 SATHYARAJ
2 THIYAGU
3 MARIMUTHU

... PETITIONERS/ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
THIRUVIDAIMARUDUR POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.137 OF 2014)

... 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 sentence imposed against the petitioners in the judgment dated 10.12.2015 in SC.No.262 of 2015 on the file of the Learned II Additional District and Sessions Judge, Thanjavur and grant bail to the petitioners pending disposal 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 MR.ARL.SUNDARESAN, Senior Counsel for M/S.AL.GANATHIMATHI, Advocate for the petitioner and of MR.C.MAYIL VAHANA RAJENDRAN, 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 are the accused in S.C.No.262 of 2015 on the file of the learned Second Additional District and Sessions Judge, Thanjavur. They stood charged for the offence punishable under Section 302 of the Indian Penal Code. By judgment dated 10.12.2015, the Trial Court 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 3 months. 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 the 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. The learned Senior Counsel appearing for the petitioners would point out that there is an inordinate delay in making the complaint and also in forwarding the same to the Court. The learned Senior Counsel would further point out that P.W.1, the *defacto* complainant himself has stated that he was not aware of as to who drafted the complaint and gave the same to him to be presented to the police. He would further point out that during cross-examination, P.W.1 has admitted that since it was dark, he was not able to see as to who stabbed where on the body of the deceased. The learned Senior Counsel would further point out that there is no other evidence. P.W.2 has only stated that he saw these accused running away from the scene of occurrence.

4. The learned Additional Public Prosecutor would, however, oppose this petition. He would submit that P.Ws.1 and 2 were cross-examined for 45 days and, therefore, they have not reiterated their stand which was taken in the chief-examination.

5. We have considered the above submissions.

6. P.W.1 has stated that he does not know as to who drafted the complaint. There is also an enormous delay in a complaint reaching the Court and there is no explanation for the same. It is seen that P.W.1 has resiled from his earlier statement during cross-examination. Thus, the evidence of P.W.1 has to be approached with some suspicion. At the same time, there is no other corroboration to the evidence of P.W.2. Thus, the petitioners have made out a *prima facie* case for suspending the substantive sentence of imprisonment.

7. Having regard to all the above, the petition is allowed and the substantive sentence of imprisonment imposed on the petitioners/accused alone is suspended pending disposal of the above said CrI.A.(MD)No.272 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 Second Additional District and Sessions Judge, Thanjavur, 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/-

06/10/2016

/ TRUE COPY /

<https://hcservices.ecourts.gov.in/hcservices/>

Sub-Assistant Registrar (C.S.)



TO

1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, THANJAVUR.

2 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
THANJAVUR DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4 THE INSPECTOR OF POLICE
THIRUVIDAIMARUDUR POLICE STATION, THANJAVUR DISTRICT.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2C.Cs to M/S.AL.GANATHIMATHI Advocate SR.No.59553

ORDER

IN

CRL MP (MD) No.9402 of 2016

IN

CRL A (MD) No.272 of 2016

Date : 06/10/2016

PA/CK/SAR III/06.10.2016/3P/8C