

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty First day of September Two Thousand

Seventeen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL MISCELLANEOUS PETITION No.12034 of 2017

IN CRL A.509/2017

DUR AISAMY, 32 YRS, [PETITIONER]

Vs

INSPECTOR OF POLICE, [RESPONDENT]
KONDALAMPATTY POLICE STATION,
SALEM DISTRICT.
CR.NO.60 OF 2013.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.509/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by The Sessions Judge Mahila Court Salem in S.C.No.110 of 2015 by judgement dated 31.07.2017 and enlarge on bail, pending disposal of the Criminal Appeal before this Honble Court and pass.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.509/2017 on the file of the High Court and upon hearing the arguments of M/S.B.VASUDEVAN, Advocate for the petitioner and of MR.IYYAPPARAJ, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge Mahila Court, Salem in S.C.No.110 of 2015 by judgment date 31.07.2017. The petitioner along with three others have been charged under Section 498 (A) and 306 of IPC. After trial, by the impugned judgment, the trial Court has convicted the petitioner under Section 498 (A) and 306 of IPC for sentence of three and ten years respectively with the fine of Rs.2,000/- each for the offences.

2. Mr.B.Vasudevan, learned counsel appearing for the petitioner has invited the attention of this Court on the two crucial witnesses namely, P.W.1 and P.W.2, who are none other than father and mother of the victim girl.

3. Both P.W.1, father of the victim and P.W.2, mother of the victim, had deposed before the trial Court that, their daughter/victim was died not due to the alleged harassment on the part of the accused persons especially the petitioner herein, who is the first accused, but only because of her continuous stomach pain, she died.

4. Though both P.W.1 and P.W.2 has deposed like this before the trial Court, the prosecution treated P.W.2, as hostile witness. Even in the cross-examination, P.W.2 has given very same statement that the petitioner and other accused persons are not responsible for the death of her daughter. Almost in the similar line the father of the victim, P.W.1 has deposed before the trial Court.

5. However, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent/State would state that though P.W.1 and P.W.2 had deposed like that in favour of the accused persons, the prosecution theory was safeguarded because of the inquest report filed by the RDO, which is marked as Ex.P.7. Therefore, based on the said inquest report, the trial Court has taken prosecution theory as proved and accordingly, conviction has been inflicted on accused persons.

6. I have considered the said aspects of this case. Since absolutely, there is no direct evidence to show that the petitioner and other accused persons had been the reasons for the death of the victim and even in respect of the two crucial witness i.e., P.W.1 and P.W.2, who are none other than the father and mother of the victim, who in fact, have deposed in favour of the accused persons. The prosecution theory, in the opinion of this Court, at least prima-facie, has not been proved beyond doubt.

7. Moreover, when the petition filed by A2 to A4 came up for consideration before this Court, I have considered this aspect and by order dated 18.08.2017 has suspended the sentence imposed against those accused persons in CrI.M.P.No.10228 of 2017 in CrI.A.No.509 of 2017.

8. Therefore, considering all these aspects, I am inclined to pass the following orders at this juncture:-

The substantive sentence imposed against the petitioner is suspended and the petitioner is released on bail on the

following conditions:

a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate, Additional Mahila Court, Salem, within a period of four weeks from today and also

b) the petitioner shall appear before the trial Court on the first working day of every English calendar month at 10.30 a.m. until further orders.

-sd/-

21/09/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
ADDITIONAL MAHILA COURT, SALEM

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
KONDALAMPATTY POLICE STATION, SALEM DISTRICT.

5 THE SESSIONS JUDGE
MAHILA COURT, SALEM

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

+1 C.C. to M/S.B.VASUDEVAN Advocate on payment of necessary charges Sr.No.18460

Order

in

CRL MP.12034/2017

in

CRL A.509/2017

Date :21/09/2017

From 7.2.2001 the Registry is issuing certified
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