

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Seventh day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice N. SESHASAYEE

CRIMINAL MISCELLANEOUS PETITION No.13639 of 2017

IN CRL A.628/2017

V.MOHAN

[PETITIONER]

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
E-1, MAMALLAPURAM POLICE STATION,
KANCHEEPURAM DISTRICT.
CR.NO.47 OF 2009.

[RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased To pass an order suspending the sentence of imprisonment passed in the judgement in S.C. No.173 of 2010 on the file of the Honourable Addl. District and Sessions Judge, Chengelpet, dated 08.08.2017 and enlarge the Petitioner/Appellant on bail pending disposal of the Crl. Appeal No.628 of 2017

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.R.GANESH KUMAR, Advocate for the petitioner and of MR.R.RAVICHANDRAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

There are totally seven accused in SC.No.173/2010 on the file of the Court of the Additional District and Sessions Judge, Chengalpattu and out of them, the fifth accused died during the trial and the petitioner / appellant is arrayed as the 2nd accused.

2 The petitioner / appellant [A2] is convicted and sentenced as follows:-

Rank of the accused	Conviction under section	Sentence awarded
A2	148 IPC	To undergo two years rigorous imprisonment and to pay a fine of Rs.2000/- and in default, to undergo six months rigorous imprisonment.
	324 IPC	To undergo two years rigorous imprisonment and to pay a fine of Rs.2000/- and in default, to undergo six months rigorous imprisonment.
	302 read with 149 IPC	Rigorous imprisonment for life and to pay a fine of Rs.3000/- and in default, to undergo one year rigorous imprisonment.

3 The petitioner / appellant [A2] along with A1 had been acquitted for the commission of the offence u/s.302 IPC.

4 The learned counsel appearing for the petitioner / appellant [A2] has drawn the attention of this Court to the relevant portions of the impugned judgment dated 08.08.2017 in SC.No.173/2010 on the file of the Court of the Additional District and Sessions Judge, Chengalpattu, and would submit that even as per the version of the alleged eyewitnesses, the petitioner / appellant had caused injury to two witnesses and they did not take treatment for nearly two days and the version projected by the prosecution for connecting this petitioner with the commission of the offence, cannot be believed at all and it is also improbable and since the petitioner is having a bright chance of success in the appeal, the substantive sentence of imprisonment imposed on him, may be suspended pending disposal of the appeal.

5 *Per contra*, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] would submit that the petitioner has been convicted for the offence u/s.148 IPC as well as 302 read with 149 IPC and *de hors* of the fact that the petitioner did not cause the fatal injury to the deceased, the fact remains that he was a member of the unlawful assembly and further that, the eyewitnesses had cogently spoken about the overt act on the part of this petitioner / appellant and hence, prays for dismissal of this miscellaneous petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 A perusal of the impugned judgment would disclose that the eyewitnesses had spoken about the overt act on the part of the petitioner / appellant and with the aid of section 149 IPC, he has been convicted for the commission of the offence u/s.302 IPC and that apart, he has also been convicted for the commission of the offence u/s.148 IPC. The points urged by the learned counsel for the petitioner / appellant [A2] revolve round adjudication on merits of the appeal and at this stage, it cannot be considered.

8 Therefore, the miscellaneous petition is dismissed.

9 The Registry is directed to prepare the typed set of papers for expediting the appeal and list the criminal appeal for final hearing.

-sd/-

07/11/2017

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 CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU [FOR INFORMATION]

2 THE ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CHENGALPATTU.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE THROUGH
THE INSPECTOR OF POLICE,
E-1, MAMALLAPURAM POLICE STATION,
KANCHEEPURAM DISTRICT. CR.NO.47 OF 2009.

5 THE SUPERINTENDENT
CENTRAL PRISON, PUZHAL.

C.C. to M/S.R.GANESH KUMAR Advocate on payment of necessary charges

Order
in
CRL MP.13639/2017
in
CRL A.628/2017
Date :07/11/2017

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
EGR 16/11/2017