

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Thirteenth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice S. VIMALA

CRIMINAL MISCELLANEOUS PETITION No.14165 of 2017

IN CRL A.720/2017

1 DAVID,
2 LOORTHUSAMY @ LOORTHU,

[PETITIONERS / APPELLANTS]

Vs

STATE BY ITS
INSPECTOR OF POLICE,
THALAVADY POLICE STATION,
ERODE DISTRICT.
CRIME NO.6 OF 2013,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.720/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the judgment dated 07.11.2017 made in S.C.No.91 of 2016 on the file of the learned Additional Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and enlarge the petitioners on bail disposal of this Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.720/2017 on the file of the High Court and upon hearing the arguments of M/S.N.MANOKARAN Advocate for the petitioner and of MR.V.ARUL Addl. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

Petitioners faced trial in S.C.No.91 of 2016 on the file of learned Additional Sessions, Magalir Neethimandram (Fast Track Mahila Court), Erode. Under judgment, dated 07.11.2017, the Court below convicted and sentenced the petitioners / appellants under the offence that is tabulated as hereunder:-

<i>Convicted under the Offence</i>	<i>Sentenced</i>
Under Section 279 IPC	to undergo six months rigorous imprisonment with fine of Rs.1,000/- in default to undergo one month simple imprisonment.

<i>Convicted under the Offence</i>	<i>Sentenced</i>
Under Section 338 IPC	to undergo two years rigorous imprisonment with fine of Rs.1,000/- in default to undergo six months simple imprisonment.
Under Section 304 (Part II) IPC	to undergo ten years Rigorous Imprisonment with fine of Rs.10,000/- in default to undergo two years simple imprisonment.
Under Section 279 r/w 35 IPC	to undergo six months rigorous imprisonment with fine of Rs.1,000/- in default to undergo one month simple imprisonment.
Under Section 338 r/w 35 IPC	to undergo two years rigorous imprisonment with fine of Rs.1,000/- in default to undergo six months simple imprisonment.
Under Section 304 (Part II) r/w 35 IPC	to undergo ten years Rigorous Imprisonment with fine of Rs.10,000/- in default to undergo two years simple imprisonment.

2. As against the conviction and sentence, the petitioner seeks suspension of sentence.

3. The main contention of the learned counsel appearing for the petitioners / appellants / accused is that there was no intention to cause death and the accused had also no knowledge that their activity of driving, in all probability, is likely to cause death; at the most it can only be the case of the rash and negligent driving and there is no basis for invoking Section 304 (2) IPC. It is also contended that there are contradictions in material particulars in the evidence of the prosecution witnesses.

4. Heard learned Additional Public Prosecutor on the submissions made by learned counsel for petitioners.

5. The learned Additional Public Prosecutor seeks time to file counter, as the conviction against the petitioners is for a period of ten years.

6. Taking into consideration the submissions of the learned counsel appearing for both sides and considering the grounds of the Appeal and considering the fact that the Appeal is not likely to be taken up for final hearing, in the near future and also considering that the applicability of Section 304 (2) IPC against the petitioners itself is under dispute, this Court is of the view that the petitioners herein may be granted the relief of suspension of sentence.

7. Accordingly, the substantive sentence of imprisonment alone is suspended and petitioners herein are directed to be enlarged on bail on condition that each of the petitioners shall execute a bond in a sum of Rs.10,000/- each (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of learned Judicial

Magistrate, Sathyamangalam, and on further condition that petitioners shall appear before the said Court on the first working day of every month at 10.30 a.m. pending Appeal.

-sd/-

13/12/2017

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,
SATHYAMANGALAM

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
THALAVADY POLICE STATION,
ERODE DISTRICT.

5 THE ADDITIONAL SESSIONS
MAGALIR NEETHIMANDRAM[FAST TRACK MAHILA COURT],
ERODE

6 THE SUPERINTENDENT
CENTRAL PRISON, COIMBATORE

+1 C.C. to M/S.N.MANOKARAN Advocate on payment of necessary charges SR.NO. 22582

Order

in
CRL MP.14165/2017

in
CRL A.720/2017

Date :13/12/2017

From 7.2.2001 the Registry is issuing certified
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RD 15/12/2017