

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Thirteenth day of March Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice S. NAGAMUTHU

and

The Hon`ble Dr Justice ANITA SUMANTH

CRIMINAL MISCELLANEOUS PETITION No.3182 to 3184 of 2017

IN CRL A.112 & 113/2017

S.SUBIAH, [PETITIONER IN CRL.MP.NOS.3182 & 3183/2017]

VARATHARAJ [PETITIONER IN CRL.MP.NO.3184/2017]

Vs

1 STATE BY [RESPONDENT IN ALL THE PETITIONS]
PAUL SINGH, SUB-DIVISIONAL MAGISTRATE AND
PERSONAL ASSISTANT (URBAN LAND TAX) TO
COLLECTOR, CHENNAI

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal Nos.112 & 113/2017 on the file of the High Court, the High Court will be pleased to

[i]suspend the payment of fine amount of Rs.1,50,000/- imposed by the learned XIX Additional Sessions Judge, Chennai in S.C.No.251 of 2009 dated 21.02.2017 pending disposal of the above C.A.NO.112/2017[IN CRL.MP.NO.3182/2017]

[ii]suspend the sentence passed by the learned XIX Additional Sessions Judge, Chennai in S.C.No.251 of 2009 dated 21.02.2017 and release the petitioner on bail pending disposal of the above C.A.NO.112/2017[IN CRL.MP.NO.3183/2017]

[iii]suspend the sentence passed by the learned XIX Additional Sessions Judge, Chennai in S.C.No.251 of 2009 dated 21.02.2017 and release the petitioner on bail pending disposal of the above C.A.NO.113/2017[IN CRL.MP.NO.3184/2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No. on the file of the High Court and upon hearing the arguments of MR.A.RAGUNATHAN SENIOR COUNSEL FOR M/S.P.RAMESH KUMAR Advocate for the petitioner and of MR.V.M.R.RAJENTREN ADDL.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/appellants are A.1 & A.3 in Sessions Case No.251 of 2009, on the file of the learned XIX Additional Sessions Judge, Chennai. They have been convicted for offences under Sections 342, 302 r/w 34 and 201 r/w 34 I.P.C. The maximum sentence imposed on them is imprisonment for life. Challenging the said conviction and sentence, they have come up with the above Criminal Appeals. Pending appeal, they seek for suspension of sentence of imprisonment and A.1 has sought for suspension of fine amount imposed by the trial Court, in CrI.M.P.No.3182/2017 in CrI.A.No.112 of 2017.

2.We have heard Mr.A.Ragunathan, learned Senior Counsel appearing for the petitioners/A.1 & A.3 and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3.The learned Senior Counsel appearing for the petitioners would submit that the prosecution has even failed to prove that the death of the deceased was a homicide. In order to substantiate his contention, the learned Senior Counsel would submit neither the Doctor who conducted post mortem on the body of the deceased was examined nor the post mortem certificate was marked. He would further submit that the Doctor who conducted autopsy was no more. But, no secondary evidence whatsoever was let in on the side of the prosecution and to get the second opinion from another Doctor. Though, in the judgment, Ex.P.5 has been mentioned in the list of Exhibits as post mortem certificate, in paragraph No.10 of the judgment, it is mentioned that Ex.P.5 is the Inquest report. Thus, we find that even the post mortem certificate was not marked so as to prove the death of the deceased as homicide and no witness was examined to prove the same. We do not understand as to how the trial Court has come to the conclusion that the appellants herein are the perpetrators of the crime, when there is no evidence to connect them with the crime. In such view of the matter, we are inclined to suspend the sentence. Considering the request made by the learned Senior Counsel appearing for A.1, we are inclined to suspend the payment of fine amount of Rs.1,50,000/- imposed on A.1.

4.In the result, these miscellaneous petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners/A.1 & A.3 alone are suspended and they are directed to be enlarged on bail on condition that each of them shall execute 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 Chief Metropolitan Magistrate, Allikulam Road, Chennai and on further condition that the petitioners/A.1 & A.3 shall report before the Committal Court on the first working day of every English Calendar

month at 10.30 a.m., until further orders.

-sd/-
13/03/2017

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 XIX ADDITIONAL SESSIONS
JUDGE, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, ALLIKULAM ROAD, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE BY
PAUL SINGH, SUB-DIVISIONAL MAGISTRATE AND
PERSONAL ASSISTANT (URBAN LAND TAX) TO
COLLECTOR, CHENNAI

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI

+3 C.C. to M/S.P.RAMESH KUMAR Advocate on payment of necessary
charges SR.NOs.15533,15534,15535

Order

in
CRL MP.3182 to 3184 /2017

in
CRL A.112 & 113/2017

Date :13/03/2017

From 7.2.2001 the Registry is issuing certified
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RD 16/03/2017