



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

Tuesday, the Twenty Fourth day of October Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice R.SUBBIAH

and

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL MP (MD) No.9275 of 2017

IN

CRL A(MD) No.406 of 2017

MALKIA

... PETITIONER/APPELLANT/ACCUSED NO.2

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALWARTHIRUNAGARI POLICE STATION,
ALWARTHIRUNAGARI, THOOTHUKUDI DISTRICT.
CR NO. 168/2014.

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the execution of the sentence and conviction order dated 15/04/2016 made S.C.No.183/2015 on the file of the 2nd Additional District and Sessions Court, Thoothukudi and enlarge me bail pending disposal of the above Crl.A.

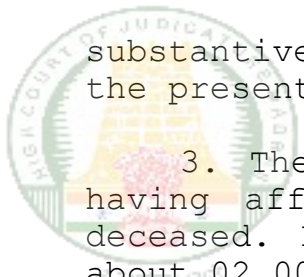
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.G.KARUPPASAMY PANDIAN for M/S.F.DEEPAK, Advocate for the petitioner and of MR.R.RAMACHANDRAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

Order of the Court was made by **R.SUBBIAH, J.**

The petitioner herein is the second accused in S.C.No.183 of 2015, on the file of the learned Second Additional District and Sessions Judge, Thoothukudi. There was yet another accused in the case and both of them were convicted and sentenced as follows:-

Accused	Convicted under Sections	Sentence imposed	Fine amount
1 and 2	302 r/w 34 IPC	To undergo imprisonment for life.	Rs.1,000/-each and in default to undergo rigorous imprisonment for one year.

2. The petitioner/the second accused preferred an appeal against the said Judgment of the Trial Court dated 15.04.2016, both in respect of conviction and sentence. Pending disposal of the Criminal Appeal, the petitioner prayed for an order suspending the



substantive sentences and directing her release on bail by filing the present Miscellaneous Petition.

3. The case of the prosecution is that the first accused was having affair with the second accused, who is the wife of the deceased. Both the accused committed the offence on 13.05.2014 at about 02.00 AM.

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4. The learned counsel appearing for the petitioner submits that the evidence of PW-1 is contrary to the evidence of the doctor, who conducted the postmortem. Even PW-1 has stated that between 05.00 and 06.00 AM, the police sniffer dog came to the place of occurrence. However, the complaint itself was given at about 10.00 AM. Thus, according to the learned counsel, there is no necessity for the arrival of the police sniffer dog, if really PW-1 is an eye-witness, which creates doubt in the case of the prosecution.

5. The learned counsel for the petitioner, by relying upon the copy of the order dated 08.09.2017, made in CrI.MP(MD).No.6935 of 2017 in CrI.A.(MD).No.289 of 2017, contended that the first accused in this case was granted suspension of sentence and thus, the same benefit of suspension of sentence may also be granted to the second accused also.

6. We have heard Mr.R.Ramachandran, learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

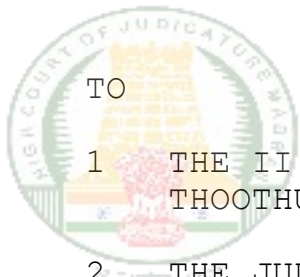
7. Considering the averments made in the affidavit filed in support of the Miscellaneous Petition, more particularly, taking into account the fact that the first accused herein was granted the relief of suspension of substantive sentence, we are of the considered view that the petitioner herein can also be granted the relief of suspension of substantive, sentence subject to certain conditions.

8. In the result, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner/the second accused alone is suspended and the petitioner shall be released on bail on condition that she executes a bond for a sum of Rs.10,000/- (Rupees ten thousand only) along with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Srivaikundam, with a further condition that after such release, the petitioner shall appear before the said Court once in a month, i.e., on the first working day of every English Calendar Month at 10.30 a.m., till the disposal of the appeal or until further orders.

sd/-

24/10/2017

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TO

1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI.

2 THE JUDICIAL MAGISTRATE, SRIVAIKUNDAM.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE,
ALWARTHIRUNAGARI POLICE STATION,
ALWARTHIRUNAGARI, THOOTHUKUDI DISTRICT.

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

+1. C.C. to M/S.F.DEEPAK Advocate SR.No.33185

ORDER

IN

CRL MP (MD) No.9275 of 2017

IN

CRL A (MD) No.406 of 2017

Date :24/10/2017

MKV-CM-MSA-SAR 2/26.10.2017/3P-8C