

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eleventh day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

and

The Hon`ble Mr Justice M.NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.5542 of 2018

IN CRL A.227/2018

1 CHANDRU

[APPELLANTS/ACCUSED 2 & 6]

2 RAJKAMAL @ RAJA,

Vs

THE STATE REP BY ITS

[RESPONDENT]

THE INSPECTOR OF POLICE,

PALLIKONDA CIRCLE,

ANAICUT POLICE STATION,

VELLORE DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.227 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of 2nd, 6th appellant in connection with S.C.No.1 of 2017 on the file of the Principal Sessions Judge, Vellore enlarge them bail dated 09.03.2018 pending disposal of the main CRL.A.NO.227/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.227 of 2018 on the file of the High Court and upon hearing the arguments of M/S.M.RAJENDIRAN, Advocate for the petitioner and of MR. M.PADMAVATHY GANESH RAM, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioners/Appellants/A2 and A6 and the Learned Additional Public Prosecutor for the Respondent.

2.The Petitioners/Appellants 2 & 6/A2 & A6 along with other four Accused (viz., A1, A3 to A5) have preferred the instant Criminal Appeal before this Court as against the Judgment dated 09.03.2018 in S.C.No.1 of 2017 passed by the Learned Principal Sessions Judge, Vellore, Vellore District.

3.The Learned Principal Sessions Judge, Vellore, while passing the Judgment in S.C.No.1 of 2017 on 09.03.2018 had found the

Petitioners/Appellants 2 & 6/A2 and A6 found guilty in respect of the offence under Section 147 I.P.C. and were convicted and sentenced to undergo Simple Imprisonment for a period of one year. However, it found the Petitioners/A2 & A6 found guilty in respect of the offence under Section 294(b) I.P.C. and imposed a punishment of one year Simple Imprisonment along with other Accused.

4.It appears that the Petitioners/A2 and A6 were found not guilty in respect of the offences under Sections 323, 302 I.P.C. and they were acquitted under Section 235(1) Cr.P.C. Also that, the 6th Accused was found not guilty of the offence under Section 302 read with 149 I.P.C. and he was acquitted under Section 235(1) Cr.P.C.

5.In so far as the A1 to A6 were concerned, the trial Court found them guilty in respect of the charge under Section 147 I.P.C. and accordingly, A1 to A6 were convicted and sentenced to undergo simple imprisonment for a period of one year. Moreover, the Accused 1, 3 to 5 were found guilty of the charge under Section 302 I.P.C. and accordingly, they were sentenced to undergo Imprisonment for Life and further, A1, A3 to A5 each were directed to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of one year.

6.Being dissatisfied with the Judgment of the Learned Principal Sessions Judge, Vellore in S.C.No.1 of 2017 [as an aggrieved persons], the Petitioners/Appellants 2 & 6/A2 and A6 have projected the instant Crl.M.P.No.5542 of 2018 seeking Suspension of Sentence and to enlarge them on Bail.

7.According to the Learned Counsel for the Petitioners/Appellants /A2 and A6, the trial Court failed to appreciate that the Investigating Agency had not conducted an enquiry or recorded a statement of Kutti @ Vijayakumar and therefore, it is highly doubtful that the presence of witness P.W.1 at the place of occurrence.

8.The Learned Counsel for the Petitioners/A2 & A6 projects an argument that at the time of filing charge sheet, P.W.2 was cited only as corroborate witness to P.W.1, however, he was treated as an eyewitness.

9.Yet another point put forward on the side of the Petitioners/A2 & A6 is that all the eyewitnesses viz., P.W.1 to P.W.5 are close relatives of the deceased Velu and there was no independent eyewitness or any corroborative witness or necessary witness to speak about the alleged occurrence in favour of the prosecution case.

10.Advancing his arguments, the Learned Counsel for the Petitioners contends that the occurrence said to have taken place on 13.03.2016 at 08.15 p.m. near busiest place, but the prosecution had failed to examine a single individual witness or third party witness and therefore, the prosecution case stands vitiated.

11.The Learned Counsel for the Petitioners points out that the trial Court had accepted the evidence of P.W.1 to P.W.7 in support of the prosecution's case, at the same time, the trial Court had failed

to analyse the deposition of evidence of witnesses by each and every line/words.

12.The Learned Counsel for the Petitioners submits that P.W.9 (Doctor) who conducted post-mortem of the deceased Velu, in the course of his cross examination, had deposed normally at the time of post-mortem in murder case, the weapons would be shown to him. However, in the present case, no weapons shown to him and furthermore, P.W.9 had stated that the material and weapons 1 to 4 are new one. Therefore, according to the Petitioners/A2 & A6, the Investigation Agency had prepared the case property by purchasing the same in the open market and produced before the trial Court.

13.Lastly, it is the submission of the Learned Counsel for the Petitioners that the Petitioners/A2 & A6 along with other A1, A3 to A5, who have filed the present Criminal Appeal, had raised substantial/ arguable points which require detailed rumination in the hands of this Court at the time of disposal of present Criminal Appeal.

14.Per contra, the Learned Additional Public Prosecutor for the Respondent submits that the Accused A1 to A6 (Appellants in main case) were armed with deadly weapons with the common object of causing death of the deceased Velu, who endeavoured to rescue the Defacto Complainant Murugan along with his wife P.W.5 - Dhanaranjani from the hands of the Appellants and in short, the Appellants had committed the heinous crime of murder and caused the death of the deceased Velu.

15.The Learned Additional Public Prosecutor for the Respondent/ Complainant contends that the Petitioners/A2 and A6 prevented the prosecution witnesses and not permitted them to save the life of Velu and effectively facilitated and abetted the offence of murder committed by the rest of the Accused which squarely attracted the offences punishable under Sections 302 read with 149 I.P.C.

16.In short, it is the version of the Respondent/Complainant that the Appellants/Accused 1 to 6 had acted with common object of committing the offence of murder. Apart from that, the evidence of injured eyewitnesses as well as the other eyewitnesses, although they are related to the deceased naturally the respective evidences would prevail in the interest of Justice.

17.The Learned Additional Public Prosecutor for the Respondent/ Complainant comes out with a plea that when sufficient injured eyewitnesses and actual eyewitnesses are available to speak about the occurrence, there is no need for the Respondent/Complainant to examine the third party witness/witnesses.

18.The Learned Additional Public Prosecutor brings it to the notice of this Court that the admissible portion of the confession statement of the Appellants/A1 to A4 were marked as Ex.P7, Ex.P9, Ex.P11 and Ex.P14 which had effectively established the case (through P.W.10 - Dhanapal - V.A.O.).

19.Finally, it is the contention of the Learned Additional Public Prosecutor for the Respondent that the present Miscellaneous Petition seeking Suspension of Sentence and enlargement of Accused on Bail viz., A2 & A6 may be deferred till the disposal of the Appeal, because of the reason that if the Suspension of Sentence and Bail are ordered, A2 and A6 may be likely to abscond.

20.By way of Reply, it is represented on behalf of the Petitioners/ A2 & A6 that the Petitioners/A2 and A6 (Appellants) were on Bail throughout the conduct of trial in S.C.No.1 of 2017 on the file of the Learned Principal Sessions Judge, Vellore.

21.It is an axiomatic principle in Law that an Appeal is a continuation of Original Proceedings of the trial Court viz., S.C.No.1 of 2017. In reality, the Petitioners/Appellants 2 & 6/A2 & A6, in the instant case, have exercised their statutory right of preferring the Appeal as envisaged under the Criminal Procedure Code.

22.It cannot be forgotten that filing of a 'Miscellaneous Petition' seeking 'Suspension of Sentence' and to enlarge an Accused on Bail forms an integral part of the main Appeal.

23.In this connection, it cannot be out of place for this Court to make a pertinent mention that when a person is sentenced to short term imprisonment, the normal rule is that pending Appeal, the sentence ought to be suspended and rejection is only by means of an 'exception' as per decision of the Hon'ble Supreme Court in **Kiran Kumar V. State of Madhya Pradesh reported in Judgment Today 2000 Suppl. (1) SC 208.**

24.On a careful consideration of respective contentions and also this Court, on going through the 'Memorandum of Grounds' mentioned in the Criminal Appeal, is of the considered view that some arguable/debatable points were raised by the Petitioners/Appellants which require detailed consideration in the hands of this Court at the time of hearing of the main Criminal Appeal.

25.Be that as it may, in view of the fact that the Petitioners/Appellants 2 and 6/A2 & A6 were convicted and sentenced to undergo Simple Imprisonment for one year in respect of an offence under Sections 147 and 294(b) I.P.C. respectively and this Court, taking note of the fact that an 'Appeal' is a continuation of Original Proceedings of the trial Court and also, by keeping in mind the other attendant facts and circumstances of the present case, at this stage, this Court is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioners/Appellants 2 and 6/A2 & A6 on each of them executing 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 Judicial Magistrate - V, Vellore and on further condition that they shall appear before the said Court Weekly once viz., Every Thursday at 10.30 a.m. without fail, till the disposal of the Criminal Appeal.

26. Accordingly, the Crl.M.P.No.5542 of 2018 is ordered, on above terms.

-sd/-
11/06/2018

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,
NO.V, VELLORE.

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

3 THE PRINCIPAL SESSIONS JUDGE,
VELLORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
PALLIKONDA CIRCLE,
ANAICUT POLICE STATION, VELLORE DISTRICT.

+1 C.C. to M/S.M.RAJENDIRAN Advocate on payment of necessary charges-Sr.10378

Order

in
CRL MP.5542/2018

in
CRL A.227/2018

Date :11/06/2018

From 7.2.2001 the Registry is issuing certified
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