

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixteenth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL MISCELLANEOUS PETITION No.608 of 2018

IN CRL A.559/2017

1 DINESH @ DINESHKUMAR, [PETITIONERS]
2 VELAYUTHAM,
3 DEVANATHAN,
4 SILAMBU @ SILAMBARASAN @ SELVAKUMAR
5 RAGHURAMAN,

Vs

STATE BY, [RESPONDENT]
INSPECTOR OF POLICE, CUDDALORE
O.T.POLICE STATION, CUDDALORE DISTRICT.
CR.NO.167 OF 2016

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.559/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioners herein by the Learned I Additional District & Sessions Judge, Cuddalore in S.C.No.179 of 2016 dated 28.07.2017 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.559/2017 on the file of the High Court and upon hearing the arguments of M/S.A.ARASU GANESAN, Advocate for the petitioner and of MR. T. SHANMUGA RAJESWARAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

This petition has been filed to suspend the sentence imposed against the petitioners, who were A1 to A4 and A6, by the judgment and conviction made by the learned I Additional District and Sessions Judge, Cuddalore in S.C.No.179 of 2016 dated 28.07.2017.

2. At the outset, the learned counsel for the petitioners/appellants has made a submission that except the second petitioner viz., Velayutham, in respect of the other petitioners, he does not want to press the matter and hence he seeks dismissal of this petition, so far as the petitioners 1 and 3 to 5 are concerned. The learned counsel for the petitioners/appellants, thereafter has made a submission for seeking indulgence of this Court to suspend the sentence, in so far as the second petitioner is concerned, who is A2 in this case.

3. The learned counsel for the petitioners/appellants would also submit that even according to the prosecution, A2 did not inflict any bodily injury on the vital parts of the deceased, therefore, he should not have been convicted for the offence punishable under Section 326 of IPC r/w 149 of IPC. He would further submit that the second petitioner has been inside the jail from 28.07.2017, onwards, therefore, at least his case can be considered.

4. The learned Government Advocate (Crl. Side) appearing for the respondent/State would submit that insofar as these petitioners are concerned, there are specific overt act against them i.e, A1 to A4 as well as A6, who have caused bodily injury on the vital parts of the deceased, which injuries, according to the Post Mortem certificate and Doctor's evidence, caused the death of the deceased. Therefore, the learned Government Advocate (Crl. Side) would submit that the trial Court after having considered the evidence adduced on the side of the prosecution had come to the conclusion that all these petitioners are not liable to be punished under Section 302 of IPC and they would be certainly punishable under Section 326 of IPC and accordingly, they have been convicted through the judgment impugned. Therefore, the learned Government Advocate (Crl. Side) would submit that none of the petitioners are entitled to seek for suspension of sentence at this juncture.

5. I have considered the rival submissions made by both sides and perused the materials placed before this Court.

6. As has been rightly pointed out by the learned counsel for the appellant that it is not even the case of the prosecution that A2-Velayutham i.e., the second petitioner herein had inflicted any bodily injury on the vital part of the deceased. Even according to the evidence of the prosecution, A2 i.e, the second petitioner herein had caused injury on the left knee of the deceased Manikandan. If any injury was caused on the knee, that certainly would not be the reason for death and therefore, the injury allegedly caused by A2-Velayutham i.e, the

second petitioner herein may not have caused the death of the deceased.

7. Considering the said aspect of the case and also considering the facts that the second petitioner has been inside from the date of judgement i.e, 28.07.2017, considering the said incarceration of the second petitioner i.e, A2 during the pendency of the appeal, this Court is inclined to pass the following orders :-

8. This Court, considering the above said aspects, is inclined to consider the suspension of sentence of the second petitioner alone and release the second petitioner on bail. Accordingly, the substantive sentence of imprisonment of the second petitioner alone is suspended and the second petitioner is released on bail on the following conditions :-

(ii) the second petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a likesum to the satisfaction of the learned I Additional District Judge, Cuddalore and also

(iii) the second petitioner shall appear before the trial Court on the first working day of every English calender month at 10.30 a.m. until disposal of the appeal.

(iii) In order to verify the identity of the sureties, they have to affix their photographs and left thumb impression in the surety bound and the learned I Additional District and Session Judge, Cuddalore may obtain a copy of their Aadhar Card or Bank passbook to ensure their identity.

9. In respect of the other petitioners, this petition stands dismissed as not pressed.

-sd/-
16/03/2018

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 I ADDITIONAL DISTRICT
AND SESSION JUDGE, CUDDALORE

2 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

3 STATE BY,
INSPECTOR OF POLICE, CUDDALORE O.T.POLICE
STATION, CUDDALORE DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.A.ARASU GANESAN Advocate on payment of
necessary charges

Order
in
CRL MP.608/2018
in
CRL A.559/2017

Date :16/03/2018

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

MD: 16/03/2018