



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

Tuesday, the Tenth day of April Two Thousand and Eighteen

PRESENT

The Hon`ble Mr.Justice C.T.SELVAM
and

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP (MD) No.1898 of 2018

IN

CRL A(MD) No.121 of 2018

1 N.KESAVAN

2 K.NAGARAJAN

... APPELLANTS/ACCUSED No.1 & 2

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
KENIKARAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
(CRIME NO.259 OF 2011).

... RESPONDENT/COMPLAINANT

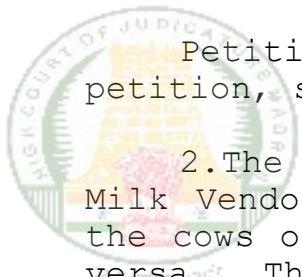
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence and grant bail to the Appellants / Accused No.1 & 2 against the Judgment dated 10.01.2018 passed in S.C.No.05 of 2012 on the file of the Additional District and Sessions Court Ramanathapuram District in Crime No.259 of 2011 on the file of the Respondent Police pending disposal of the instant Criminal Appeal on such terms and conditions as may be deemed fit and thus render justice.

Order:This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.T.LAJAPATHI ROY, Advocate for the petitioner and of M/S.V.NEELAKANDAM, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

[Order of the Court made by **C.T.SELVAM, J.**]

Petitioners are arrayed as A1 & A2 in S.C.No.05 of 2012, on the file of the learned Additional District and Sessions Judge, Ramanathapuram, and under judgment dated 10.01.2018, they have been convicted for offences u/s. 302 IPC and sentenced as follows:

Accused	Offence	Sentence
A1	302 IPC	Life imprisonment and fine of Rs.20,000/- i/d 1 Year S.I.
A2	302 r/w 34 IPC	Life imprisonment and fine of Rs.10,000/- i/d 6 Months S.I.



Petitioners have come forward with the above miscellaneous petition, seeking relief of suspension of sentence pending appeal.

2.The case of the prosecution is that A1 and the deceased were Milk Vendors and a dispute arose between them on 01.06.2011, over the cows of one entering into the house yard of the other and vice versa. The deceased went to the Tea shop of his parents-in-law - P.Ws.1 and 2 at about 6.30 a.m., ON 03.06.2011 had a cup of tea, informed them that he was going to collect firewood and left on his motor cycle. On seeing, A1 to A3 following the deceased on a motor-cycle, P.Ws.1 and 2 grew suspicious and followed them on their motor cycle. They witnessed A2 and A3 restraining the deceased by holding him and A1 causing stab injuries to the neck and forehead and thereby, causing death. A case was registered on 03.06.2011 and the same on completion of investigation, filing of final report and committal came up for trial before Learned Additional District and Sessions Judge, Ramanathapuram in S.C.No.5 of 2012 and under Judgment dated 10.01.2018, the Accused Nos.1 and 2 were convicted for offence under Sections 302 and 302 r/w 34 of IPC., respectively. A3 had died pending trial.

3.Learned counsel for petitioners submitted that the presence of P.Ws.1 and 2 at the scene and their witnessing the occurrence has been projected in a most unlikely manner. P.W.3 another alleged eye witness and in front of whose house, the occurrence took place, had turned hostile. P.W.3 had spoken to the engagement of sniffer-dog by the Police at about 7.30 a.m. The engagement of sniffer-dog has also been admitted to by P.W.13 - Village Administrative Officer. P.W.5, who was the brother-in-law of the deceased and had also claimed to be an eye witness, had spoken to the involvement of not only the three accused, but also one other. While learned counsel submitted that the only independent alleged eye witness P.W.3 had turned hostile, the other alleged eye witnesses ie., P.Ws.1, 2 and 5 are immediate relatives, whose testimony is highly unbelievable. P.W.1 stated that the names of the assailants / accused were ascertained on enquiry with others while P.W.2 stated that the assailants were known persons.

4.Per contra, learned Additional Public Prosecutor, contended that the prosecution has established its case beyond all reasonable doubt and the minor discrepancies found in the evidence of the prosecution witnesses will not affect the prosecution case in its entirety. He strongly opposed to the grant of the relief of suspension of sentence to petitioners.

5.Considering the facts and circumstances of the case and the submission of both sides, this Court consider it appropriate to suspend the substantive portion of sentence imposed on petitioners.

6.Accordingly, the substantive sentence of imprisonment alone is suspended in respect of petitioners / A1 & A2 and they are directed to be enlarged on bail on condition that they shall execute a bond in a sum of Rs.10,000/- [Rupees ten thousand only] each with two sureties each for a like sum to the satisfaction of the learned



Judicial Magistrate No.II, Ramanathapuram and on further condition that petitioners shall report before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

sd/-
10/04/2018

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/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO-II,
RAMANATHAPURAM.
- 2 DO THOUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
- 3 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
RAMANATHAPURAM DISTRICT.
- 4 THE SUPERINTENDENT,
CRNTRAL PRISON,
MADURAI.
- 5 THE INSPECTOR OF POLICE,
KENIKARAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.T.LAJAPATHI ROY, Advocate SR.No.5791.

ORDER
IN
CRL MP (MD) No.1898 of 2018
IN
CRL A (MD) No.121 of 2018
Date :10/04/2018

SDS/CM:VR/GSR/11.04.2018/3P/8C