



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

Wednesday, the Seventeenth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Dr.Justice S.VIMALA

and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP (MD) No.11134 of 2017

IN

CRL A (MD) No.399 of 2017

1 ASHRAF ALI
2 MOHAMED SALIM
3 SYED ABUTHAHEER

... APPELLANTS/ACCUSED NO.2 TO 4

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ERWADI DHARGA POLICE STATION,
RAMANATHAPURAM DISTRICT.
CRIME NO.145/2014

... RESPONDENT/COMPLAIANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence passed in S.C.No.132/2015 dated 01/09/2017 on the file of the Additional District and Sessions Judge, Ramanathapuram enlarge the Petitioners/Accused No.2 to 4 on 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 M/S.N.MOHIDEEN BASHA, Advocate for the petitioners and of MR.K.S.DURAI PANDIAN, Additional Public Prosecutor assisted by MR.S.SIVAKUMAR, Advocate on behalf of the Respondent the court made the following order:-

(Order of the Court was made by **S.VIMALA, J**)

The petitioners/appellants are the accused Nos.2 to 4 in S.C.No.132 of 2015 on the file of learned I Additional District & Sessions Judge, Ramanathapuram. They have been convicted and sentenced as follows:

Accused	Penal provisions	Punishment
A2 to A4	342 IPC	To undergo rigorous imprisonment for one year with fine of Rs.500/-, in default, to undergo simple imprisonment for one month



A2 to A4

302 r/w 34
IPC

To undergo imprisonment for life with fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for two years

Challenging the said conviction and sentence imposed, the petitioners have come up with this appeal. Pending appeal, they seek suspension of the substantive sentence of imprisonment imposed on them.

2. We have heard the learned counsel for the petitioners, learned counsel for the de-facto complainant and the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

3. The case of the prosecution is that due to wordy quarrel between the deceased and the accused persons, viz., A1 to A4, A2 to A4 caught hold of the deceased and A1 stabbed the deceased and thereby caused the death of a young person, aged about 24 years.

4. The learned counsel for the petitioners would submit that the part played by A1 is very crucial and the part played by A2 to A4 are stated to be subtle. It is also stated that when the deceased was aged 20 years, it is impossible for a person, aged 57 years, to catch hold of a young person. The similar is the allegation with regard to A3 and A4. The learned counsel would further contend that the evidence of the eye witnesses with regard to possession of weapons as well as recovery of weapons is also doubtful and prayed for suspension of substantive sentence of imprisonment.

5. The learned counsel for the de-facto complainant would submit that suspension may be considered only in respect of A4, who is allegedly suffering from neurological disorder and opposing for others and he is ready for final hearing.

6. Heard the learned Additional Public Prosecutor on the submissions of the learned counsel for the de-facto complainant.

7. Considering the facts and circumstances of the case and considering the fact that there are arguable points in favour of the third petitioner/A4, we are inclined to suspend the sentence of imprisonment alone imposed on the third petitioner/A4 alone, pending appeal.

8. Accordingly, this petition is allowed and the substantive sentence of imprisonment imposed on the third petitioner/A4 alone is suspended and the third petitioner/A4 is directed to be enlarged on bail, on the following conditions:

The third petitioner/A4 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 Judicial Magistrate No.2, Ramanathapuram and on further condition that the petitioner shall report before the committal Court at 10.30 a.m., on the first working day of every English Calendar Month, until further orders.



9.As far as the other petitioners 1 and 2/A2 and A3 are concerned, this petition is dismissed. Registry to prepare the typed set of papers and list the appeal for final hearing.

sd/-
17/01/2018

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/ TRUE COPY /

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

TO

- 1 THE ADDITIONAL DISTRICT AND SESSION JUDGE,
RAMANATHAPURAM.
 - 2 THE JUDICIAL MAGISTRATE NO.II, RAMANATHAPURAM.
 - 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
 - 4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 - 5 THE INSPECTOR OF POLICE,
ERWADI DHARGA POLICE STATION,
RAMANATHAPURAM DISTRICT.
 - 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.N.MOHIDEEN BASHA Advocate SR.No.784

ORDER
IN
CRL MP(MD) No.11134 of 2017
IN
CRL A(MD) No.399 of 2017
Date :17/01/2018

MKV-PM-SAR 3/17.1.2018/3P-8C