



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

Monday, the Twenty Fourth day of September Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.M.SUNDRESH
and
The Hon`ble Mr.Justice N.SATHISH KUMAR

CRL MP(MD) No.11612 of 2017
IN
CRL A(MD) No.520 of 2017

DHARMARAJ

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KODANKUKLAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.208/2013

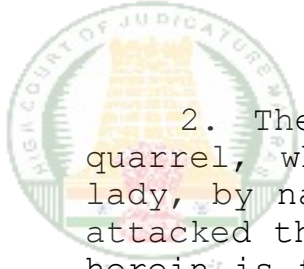
... RESPONDENT/ RESPONDENT
(COMPLAINANT)

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence dated 10.11.2017 passed in S.C No. 434/2015 by the Learned IV Additional district and Sessions Judge Tirunelveli and enlarge me on bail pending disposal of the CRL. Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.C.DHANASEELAN, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court made by **M.M.SUNDRESH, J.,**]

The petitioner is arrayed as the accused No.1 in S.C.No.434 of 2015, on the file of the Fourth Additional District and Sessions Judge, Tirunelveli and under Judgment dated 10.11.2017, he has been convicted and sentenced under various penal provisions, the maximum being imprisonment for life. Totally, there were four accused in this case. One Babu, who has been arrayed as third accused in the First Information Report, died during investigation.



2. The case of the prosecution is that pursuant to a wordy quarrel, which emanated when the accused No.2 misbehaved with one lady, by name, Vijaya. all the accused came in a Maruti vehicle and attacked the deceased. The specific overt act against the petitioner herein is that he attacked the deceased with knife. The Trial Court acquitted all the other accused, while convicting the petitioner herein, primarily based upon the evidence of PW-1. Seeking relief of suspension of sentence pending appeal, the petitioner has come forward with the present Miscellaneous Petition,

3. The learned counsel appearing for the petitioner would submit that this is a case, which involved a case of counter. The accused No.3 has given a complaint in Crime No.210 of 2013, which has not been investigated into by the prosecution. Though EX-P1 states that the time of occurrence was at 09.00 PM, it was specifically changed into 08.00 PM, in order to avoid the counter case given by the accused No.3. There are substantial discrepancies in the evidence of PW-1. The Trial Court has accepted the evidence of PW-1 in part by disbelieving the same insofar as the other accused are concerned. The accused has been in incarceration for more than 10 months, after trial and 80 days prior to the conviction. There are sufficient grounds available for acquittal. Therefore, the petitioner will have to be granted suspension of sentence pending disposal of the appeal.

4. The learned Additional Public Prosecutor would submit that the evidence of PW-1 is very clear and cogent. He is an injured eye-witness. The overt act attributed against the other accused is different. Therefore, this petition will have to be dismissed.

5. We have considered the above submissions and perused the records carefully.

6. After considering the above submissions, we find that there are arguable points involved to be decided in the Criminal Appeal. The petitioner is in incarceration for nearly eleven months. In this case, the First Information Report was registered only under Section 307 of the Indian Penal Code and thereafter, it was altered into one under Section 302 of the Indian Penal Code. The deceased died in the hospital, after taking treatment. No dying declaration was obtained from the deceased, when he was in the hospital. There is no plausible explanation offered for not proceeding with the counter case given by the accused No.3. Considering the above, this Court deems it appropriate to suspend the substantive portion of sentence imposed on the petitioner.

7. Accordingly, the present Miscellaneous Petition is allowed and the substantive sentence of imprisonment alone is suspended in respect of the petitioner and he is directed to be enlarged on bail on condition that he shall execute a bond in 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, Valliyur,



Tirunelveli District and on further condition that the petitioner shall report before the said Court on the first working day of every English Calendar month at 10.30 a.m. pending appeal.

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sd/-
24/09/2018

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

TO

1. THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUNELVELI.
 2. THE JUDICIAL MAGISTRATE, VALLIYOOR,
TIRUNELVELI DISTRICT.
 3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
 4. THE SUPERINTENDENT, CENTRAL PRISON, TIRUNELVELI.
 5. THE INSPECTOR OF POLICE,
KODANKUKLAM POLICE STATION, TIRUNELVELI DISTRICT.
 6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to MR.C.DHANASEELAN Advocate SR.No.18137

ORDER
IN
CRL MP (MD) No.11612 of 2017
IN
CRL A (MD) No.520 of 2017
Date :24/09/2018

MS/VR-MMS/SAR-2/25.09.2018/3P.8C