



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

Monday, the Eighth 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.11477 of 2016

IN

CRL A(MD) No.442 of 2016

S.KASIMAYAN

... PETITIONER/APPELLANT/
ACCUSED NO.1

Vs

THE INSPECTOR OF POLICE,
C5-KARIMEDU POLICE STATION,
MADURAI

(IN CRIME NO.235 OF 2009)

... RESPONDENT/RESPONDENT/
COMPLAINANT

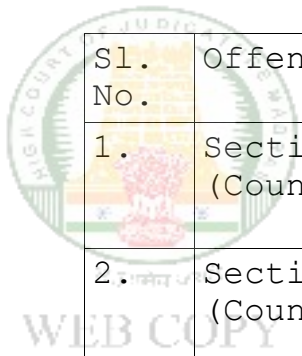
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to pass an order to suspend the execution of the sentence and conviction order dated 15.11.2016 made in SC No.12 of 2011 on the file of the 4th Additional District and Sessions Court, at Madurai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.MR.R.SHANMUGA SUNDARAM Senior Counsel for MR.M.S.JEYAKARTHIK Advocate for the petitioner and of MR.K.S.DURAI PANDIAN, Additional Public prosecutor for the Respondent the court made the following order:-

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

This Miscellaneous Petition is filed by the petitioner/A1 to suspend the execution of the sentence and conviction order dated 15.11.2016 made in S.C.No.12 of 2011 on the file of the IV Additional District and Sessions Court at Madurai and enlarge the petitioner on bail pending, disposal of the Criminal Appeal Crl.A. (MD) No.442 of 2016.

2. The petitioner is the Accused No.1 in S.C.No.12 of 2011, who has been convicted and sentenced to undergo imprisonment as follows:



Sl. No.	Offences	Sentence, Imprisonment and Default Punishment
1.	Section 302 of IPC (Count 1)	Life Imprisonment with a fine of Rs.10,000/- in default to undergo six months Simple Imprisonment
2.	Section 302 of IPC (Count 2)	Life Imprisonment with a fine of Rs.10,000/- in default to undergo six months simple imprisonment
3.	Section 449 of IPC	Life Imprisonment and also imposed a fine of Rs.5,000/- in default to undergo three months simple imprisonment

Under the said circumstances, the present petition has been filed seeking suspension of the sentence awarded.

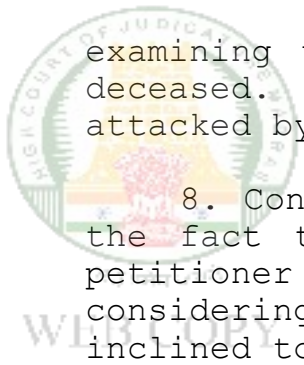
3. The case of the prosecution is that A1 being enraged on the execution of the Will by his mother in favour of the deceased Selvi and one Parthiban came to the residence of deceased along with other accused and committed the offence. The accused, deceased and prosecution witnesses are close relatives and family members as the case may be. Except the P.W.1, all other eye witnesses were disbelieved by the trial Court. Accused Nos.2 and 6 were acquitted by the trial Court. Accused No.5 died during the trial and accused No.3 died during the pendency of the appeal.

4. The learned counsel for the petitioner would submit that it is a case of mistaken identity. Though the name of the petitioner is Kasimayan and despite the fact that P.W.1 is aware of the relationship, she has not mentioned about the same. There are many persons, including A1 and A2, having the same name/Kasimayan and there is a contradiction in the evidence of P.W.1, though she has stated that she has seen the accused running from the staircase and she has also stated that they were running on the road. Though one Chandra, who is stated to have accompanied the deceased in the Ambulance to the hospital and she also signed in the Accident Registers, she has not been examined, though she is a close relative of the parties. She already stated that the deceased was attacked by five un-known persons.

5. The learned Additional Public Prosecutor would submit that it is a case of double murder. P.W.1 has spoken about the occurrence and the trial Court has rightly convicted the accused and no interference is required and therefore, the present petition will have to be dismissed.

6. Heard the learned counsel on either side.

7. It is seen that the Trial Court found that the evidence of other witnesses cannot be relied upon. Only the evidence available is P.W.1. The petitioner is stated to be only a relative of P.W.1. Even in the complaint, the relationship of the petitioner has not been stated clearly. Admittedly, there are other persons by name Kasimayan, we also find that there is no explanation for not



examining the Chandra, who is stated to have accompanied with the deceased. The Accident Register states that the deceased was attacked by five un-known persons.

8. Considering the facts and circumstances of the case and also the fact that A4 has been granted bail by this Court; that the petitioner stands on the similar footing as that of A4 and considering the period of incarceration undergone by him, we are inclined to grant suspension of the sentence to the petitioner year.

9. In fine, this petition is ordered and the sentence imposed against the petitioner in S.C.No.12 of 2011 by the learned IV Additional District and Sessions Court, Madurai is alone suspended till the disposal of Criminal Appeal No.442 of 2016 and the petitioner will be released on bail on executing a bond for a sum of Rs.10,000/- and two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate No.V, Madurai and on further condition that the petitioner shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m until further orders.

sd/-
08/01/2018

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

TO

- 1 THE 4TH ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI
- 2 THE JUDICIAL MAGISTRATE NO.V, MADURAI
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI
- 4 THE INSPECTOR OF POLICE, C5-KARIMEDU POLICE STATION,
MADURAI.
- 5 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. C.C. to M/S.M.S.JEYAKARTHIK, Advocate SR.No.288

AR
GJM/PN/SAR-4-8.1.18-3P-9C

ORDER
IN
CRL MP(MD) No.11477 of 2016
IN
CRL A(MD) No.442 of 2016
Date :08/01/2018