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

Wednesday, the Twenty Fourth day of October Two Thousand Eighteen

PRESENT

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

CRL MP(MD) No.6573 of 2018
IN
CRL A(MD) No.374 of 2018

DURAIRAJ ... PETITIONER/ APPELLANT/ SOLE ACCUSED
REP.BY NEXT FRIEND & WIFE,
M.SELVARANI

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
UPPILIYAPURAM POLICE STATION,
THURAIYUR, TRICHY DISTRICT.
CRIME NO.79/2015 ... 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 imposed on the petitioner/appellant/accused in S.C.No.70/2016 dated 06/01/2018 on the file of the Learned Principal Sessions Judge, Trichirppalli and enlarge him on bail till the 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 Mr.A.V.ARUN, Advocate for the petitioner and of Mr.R.ANANDRAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

The petitioner/appellant/accused is the sole accused in S.C.No.70 of 2016 for the offence under Section 302 IPC.

2.The case of the prosecution is that the petitioner/accused attacked the deceased on 23.03.2015 by using a grinding stone. Before the trial Court, a stand was taken referring the mental condition of the petitioner/accused by invoking Section 84 IPC. The trial Court convicted the petitioner/accused. Seeking suspension of sentence, this petition is filed.

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3.On the last occasion, before considering the matter on merit, we directed the respondent to get a report from the Medical Officer on the mental capacity of the petitioner/accused. Accordingly, the Observation Report dated 12.10.2018 is filed, wherein it is stated as follows:

> "Mr.Durairaj was admitted as inpatient in Institute of Mental Health on 23.09.2018. He has been diagnosed of Paranoid Schizophrenia and has been on treatment with appropriate medications. On mental status examination he is oriented to time, place and person. His mood is stable. His talk is relevant and coherent. He is not having any formal thought disorders or perceptual disturbances at present.
>
> The risk assessment is arbitrary and his family members are aware of the symptoms of illness and there is no family history of any mental illness which are good prognostic factors. He will be in contract with psychiatric services at Government KAPV medical college, Trichy, Psychiatry unit where he shall be taken by his family members for review and medications."

4.The learned counsel for the petitioner submits that defence put forth on the side of the petitioner/accused under Section 84 IPC has not been taken note of by the trial Judge. The petitioner was suffering from mental illness even prior to the occurrence as per the evidence adduced. The aforesaid fact is also affirmed by the Observation Report produced before this Court. As the report does not indicate any possibility of the petitioner/accused involving in similar occurrence coupled with the fact that the wife of the petitioner/accused is inclined to take proper care and give further treatment, the sentence imposed on the petitioner/accused will have to be suspended, more so, when he is in incarceration for more than three years.

5.The learned Additional Public Prosecutor appearing for the respondent would submit that considering the findings rendered by the trial Court, the sentence will not be suspended.

6.We find arguable points are involved in the appeal especially with respect to applicability of Section 84 IPC. The Observation Report also would show that the petitioner/accused can very well live among others in the society. The family members of the petitioner/accused also available to give continuous medical treatment to the petitioner/accused. Moreover, he has been incarceration for more than three years.

7.Considering the above, we are inclined to suspend the substantive portion of sentence imposed on the petitioner.

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8.Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended in respect of the petitioner/appellant/accused and the petitioner/appellant/accused is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- [Rupees ten thousand only] with two sureties for a like sum to the satisfaction of the Judicial Magistrate, Thuraiyur and on further condition that the petitioner/accused shall report before the Principal Sessions Court, Tiruchirapalli on the first working day of every English Calendar month at 10.30 a.m. pending appeal.

sd/-
24/10/2018

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

TO

1. THE PRINCIPAL SESSIONS JUDGE, TRICHIRPPALLI.

2. THE JUDICIAL MAGISTRATE, THURAIYUR.

3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
   TRICHY DISTRICT.

4. THE SUPERINTENDENT,CENTRAL PRISON, TRICHY.

5. THE INSPECTOR OF POLICE,
   UPPILIYAPURAM POLICE STATION,
   THURAIYUR, TRICHY DISTRICT.

6. THE ADDITIONAL PUBLIC PROSECUTOR,
   MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.A.V.ARUN Advocate SR.No.20234

ORDER
IN
CRL MP(MD) No.6573 of 2018
IN
CRL A(MD) No.374 of 2018
Date :24/10/2018

MS/PN/SAR-1/26.10.2018/3P.8C

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