

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Second day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.2056 of 2019

IN CRL A.81/2019

BALU @ BALAMURUGAN

[PETITIONER]

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
KAI KALATHUR POLICE STATION,
VEPPANTHATTAI TALUK,
PERAMBALUR DISTRICT.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.81/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in the case in SC.No.21 of 2015 on the file of the learned Mahila Court, Perambalur dated 31.05.2018 pending disposal of this CRL A.81/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.81/2019 on the file of the High Court and upon hearing the arguments of M/S.D.GEETHA, Advocate for the petitioner and of MR.R.PRATHAP KUMAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner/appellant is the sole accused in SC.No.21/2015 on the file of the Mahila Court, Perambalur, and he stood charged and tried for the commission of the offences u/s.307 and 302 IPC and the Trial Court, vide impugned judgment dated 31.05.2018, had acquitted him for the commission of the offence u/s.307 IPC and however, convicted him for the commission of the offence u/s.302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- with a default sentence of four years rigorous imprisonment. The Trial Court had granted set-off u/s.428 Cr.P.C.

Challenging the said conviction and sentence, the petitioner/appellant preferred CrI.A.No.81/2019 and pending appeal, he has filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The learned counsel for the petitioner would submit that the petitioner/appellant is none other than the father of the deceased child born to him and his wife, viz., P.W.21 and child was a male baby aged 45 days. It is the submission of the learned counsel that accidentally, the baby had fallen down and sustained injuries and on account of the same, he died and there is a grave doubt as to the manner of lodging the complaint and the presence of the is also very much doubtful. The learned counsel alternately pleaded that assuming that the petitioner/appellant was present in the scene of crime, in the light of the overall circumstances, he may be entitled for alteration of conviction and sentence and since the chance of success is bright in the appeal, prays for suspension of substantive sentence of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that testimony of P.W.21 - wife of the petitioner/appellant and the mother of the child, would clearly disclose that it was the petitioner/appellant who barged into the house and attacked P.W.21 and also murdered the child and since her testimony is amply corroborated by other material evidences and also scientific evidence and prays for dismissal of this petition.

4 This Court has considered the rival submissions and also perused the materials placed before it.

5 A perusal of the impugned judgment and other materials would *prima facie* disclose that it was the petitioner/appellant who went to the house of P.W.21, his wife and had an altercation and in the process, also caused injuries to her and that apart, killed his own child. Though an alternate plea has been taken by the learned counsel for the petitioner/appellant that admittedly, there was a wordy altercation and as such, he is entitled for the alteration of conviction and modification of sentence, in the considered opinion of the Court, the points urged by the learned counsel for the petitioner/appellant can be appreciated only at the time of final hearing of the appeal and therefore, this Court is not inclined to suspend the substantive sentence of imprisonment of the petitioner/appellant.

6 Hence, the miscellaneous petition stands dismissed.

-sd/-
22/02/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE MAHILA COURT,
PERAMBALUR.

2 THE INSPECTOR OF POLICE,
KAI KALATHUR POLICE STATION,
VEPPANTHATTAI TALUK,
PERAMBALUR DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1C.C. to M/S.D.GEETHA Advocate on payment of necessary charges in SR.NO. 3882

सत्यमेव जयते Order

in
CRL MP.2056/2019

in
CRL A.81/2019

Date :22/02/2019

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MLT-28/02/2019

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