

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the First day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION NO.3873 of 2019

IN CRL.A.NO.143 OF 2019

VIVEKANANDHAN

[PETITIONER / APPELLANT / ACCUSED]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
THUDIYALUR POLICE STATION,
COIMBATORE DISTRICT
CR.NO.918 OF 2016.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.143 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the judgment dated 14.11.2018 in S.C.No.230 of 2017 on the file of the Learned 1st Additional District and Sessions Judge, Coimbatore, and release the Petitioner on bail pending Criminal Appeal No.143 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.143 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.B.MOHAN, 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 is arrayed as the sole accused in SC.No.230/2017 on the file of the Court of I Additional District and Sessions Judge, Coimbatore and he stood charged for the commission of the offence u/s.302 IPC and vide impugned judgment dated 14.11.2018, the Trial Court had convicted him for the commission of the offences u/s.302 and 506[ii] - 3 counts IPC and imposed with a sentence of rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 3 months simple imprisonment for the commission of the offence u/s.302 IPC and to undergo rigorous imprisonment for one year rigorous imprisonment for each count for the commission of the offence u/s.506[ii]-3 counts IPC. The sentences were also ordered to

run concurrently and he was also granted set-off u/s.428 Cr.P.C. Challenging the conviction and sentence, the the petitioner/appellant preferred the present appeal and pending disposal of the appeal, came forward to file the present miscellaneous petition seeking suspension of substantive sentence of imprisonment.

2 The learned counsel for the petitioner/appellant would submit that the motive for the commission of the offence is that the deceased is the uncle of the petitioner/appellant and the petitioner/appellant was loitering around without any job and was staying in the house of P.W.1 and on 14.11.2016 at about 00.45 hours, the petitioner/appellant who had gone out, knocked the door of the house in which the deceased and his family members were residing. The deceased had opened the door and castigated the petitioner/appellant which developed into a wordy altercation and in the process, the petitioner/appellant took M.O.1-knife and stabbed the deceased on the left side of the neck and when P.W.1-daughter of the deceased and P.Ws.2 and 3-neighbours came, they were also threatened with dire consequences by the petitioner/appellant by brandishing the knife and the deceased Vijayakumar, on account of the injuries sustained, had breathed his last. The primordial submission made by the learned counsel for the petitioner/appellant is that though the prosecution has cited three eyewitnesses to the occurrence, except P.W.1-minor daughter of the deceased, nobody had supported the case of the prosecution and admittedly, the testimony of P.W.1 is an interested one and in the absence of any corroboration or material particulars, that testimony cannot be relief upon to point out the guilt on the part of the petitioner/appellant. It is the further submission of the learned counsel for the petitioner/appellant that one Premkumar, who is the son of the deceased, actually tried to murder his father and when the petitioner/appellant intervened, he sustained injuries on his hand and the same has not been explained by the prosecution and in the light of the said infirmities, prays for suspension of the substantive sentences of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that submit that the testimony of the sole eyewitness had inspired the confidence and the Trial Court has taken upon her testimony coupled with the scientific and other evidences and has rightly reached the conclusion of guilt and imposed the sentences accordingly and hence, prays for dismissal of the petition.

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

5 A perusal of the testimony of P.W.1-minor daughter of the deceased would disclose that it was the petitioner/appellant who caused the death of her father by stabbing him with M.O.1-knife on the left side of the neck. This Court has also gone through the testimony of P.W.1 and her testimony is in consonance with the contents of Ex.P.1-complaint. No doubt, P.W.1 as well as the Investigating Officer would state about the injuries sustained by the petitioner/appellant ; but it is not clear as to whether the injuries

are major or minor in nature. The scientific evidence in the form of Postmortem Certificate marked as Ex.P.12 and the testimony of the doctor who conducted autopsy, viz., P.W.9, would disclose that the deceased died on account of homicidal violence. It is also a settled position of law that the quality of the evidence alone is taken up for consideration and not the quantity of the evidence and in the considered opinion of the Court, the points urged by the learned counsel for the petitioner/appellant would revolve around the appreciation of the evidence and the said exercise can be done only at the time of the disposal of the appeal. This Court, on a careful scrutiny of the entire materials, is prima facie of the view that this is not a fit case wherein suspension of substantive sentence of imprisonment can be granted.

6 In the result, the miscellaneous petition is dismissed.

-sd/-

01/04/2019

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 1st ADDITIONAL DISTRICT AND SESSIONS JUDGE,
COIMBATORE.

2 THE SUPERINTENDENT,
COIMBATORE CENTRAL PRISON.

3 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
THUDIYALUR POLICE STATION,
COIMBATORE DISTRICT

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C.C. to M/S.B.MOHAN Advocate on payment of necessary charges

Order

in
CRL MP.3873/2019
in
CRL.A.143/2019

Date :01/04/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:08/04/2019



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