

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Seventh day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.2708 of 2019

IN CRL.A.NO.227 OF 2018

1 BABU @ SARAVANAN
2 SIVALINGAM
3 KANNAN

[PETITIONERS/APELLANTS]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
PALLIKONDA CIRCLE,
ANAICUT POLICE STATION,
VELLORE DISTRICT
CRIME NO.52 OF 2016.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.No.227 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Learned Principal Sessions Judge, Vellore Vellore District in S.C.No.1 of 2017 dated 09.03.2018 against the petitioners 1 to 3 (A1, A4 and A5) and enlarge them on bail pending disposal of the C.A.No.227 of 2018 on the file of this Honble Court

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.No.227 of 2018 on the file of the High Court and upon hearing the arguments of MR.M.G.UDAYASHANKAR for M/S.S.SHANTHAKUMARI, Advocate for the petitioners, 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.,]

This Court, vide order dated 21.02.2019 has dismissed the above miscellaneous petition for suspension of substantive sentence of imprisonment insofar as A1 and A4 are concerned and however, adjourned the matter insofar as A5 is concerned on the ground that the medical/health condition was pleaded for suspension of the substantive sentence of imprisonment.

2 The Assistant Surgeon, attached to the Dispensary at Central Prison, Vellore, has given a Medical Certificate/Report dated 26.02.2019 stating among other things, that the 3rd petitioner/A5 is known case of "severe Aortic-regurgitation, mild mitral regurgitation, mild tricuspid regurgitation." Aortic Valve replacement was done in the year 2009 and he is on regular medication. He was admitted on 09.03.2018 and he has been given regular medicine with the consultation of the Cardiologist. In sum and substance, the Report says that the health condition of the 3rd petitioner/A5 is stable as well as he needs regular check up and the Cardiologist review for adjusting the dose of T.Acitrom is also required to maintain his health condition and in the light of the said Report, this Court is of the considered view that on health/medical condition/ground, the petitioner is not entitled for suspension of the substantive sentence of imprisonment.

3 Now, coming to the merits of the petition, it could be seen from the judgment, P.Ws.2 to 7 were the eyewitnesses to the occurrence and the 3rd petitioner/A5 has been attributed with the specific overt act that he stabbed the deceased on his forehead and in Ex.P.1 also, P.W.1 has stated that the 3rd petitioner/A5 had inflicted the said injury. Ex.P.6-Postmortem Certificate of the deceased would also indicate that "horizontally oblique linear laceration 5.5x2.1cmxbone deep on the centro of the forehead, margins regular and contused ; underlying cranial vault intact". The Trial Court has recorded the finding that the said injury corroborates with the evidence of the prosecution and sustained its case against the accused and therefore, held that the charge u/s.302 IPC against the 3rd petitioner/A5 has been made out and that apart, he is also a part of unlawful assembly and as such, he was found guilty for the commission of the offences u/s.147, 294[b] and 302 IPC and he was sentenced to undergo simple imprisonment for one year each for the commission of the offences u/s.147 and 294[b] IPC and to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of 1 year rigorous imprisonment. The 3rd petitioner/A5 was found not guilty for the commission of the offence u/s.324 IPC and he was acquitted.

4 This Court is *prima facie* of the view that in the light of the specific overt act attributed to the 3rd petitioner/A5 and also as spoken to by the eyewitnesses, especially, P.W.1, and also considering the Medical Report given by P.W.9-the doctor who conducted autopsy, this is not a fit case wherein the substantive sentence of imprisonment could be suspended.

5 In the result, the petition is **dismissed**. However, the Jail Authorities concerned, are directed to monitor the health condition of the 3rd petitioner/A5 at regular intervals and bestow proper and timely medical attention to him.

-sd/-
07/03/2019

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 PRINCIPAL SESSIONS JUDGE
VELLORE, VELLORE DISTRICT

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

4 THE INSPECTOR OF POLICE,
PALLIKONDA CIRCLE,
ANAICUT POLICE STATION,
VELLORE DISTRICT.

5 THE ADDITIONAL DIRECTOR
GENERAL OF POLICE (PRISONS),
EGMORE, CHENNAI-600 008.

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

Order

in
CRL MP.2708/2019
in
CRL A.227/2018

Date :07/03/2019

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