

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth 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.2788 of 2019

IN CRL.A.No.437 OF 2018

K.SATHIYAMOORTHY

[PETITIONER]

Vs

THE STATE REP BY ITS,
THE INSEPCTOR OF PLICE,
GUDIYATHAM TALUK POLICE STATION,
GUDIYATHAM, VELLORE DISTRICT.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.437 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed upon the petitioner and enlarge the petitioner on bail in respect of SC.No.17 of 2015 on the file of the Additional District and Sessions Judge, Vellore pending Crl.A.No.437 of 2018 subject to such terms of conditions that may be imposed by this Hon`ble court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.437 OF 2018 on the file of the High Court and upon hearing the arguments of MR.D.RAJAGOPAL, 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.]

There are two accused in SC.No.17/2015 on the file of the Court of Additional District and Sessions Judge [Fast Track Court], Vellore and the petitioner/appellant is arrayed as A-1. A-1 stood charged and tried for the commission of the offences u/s.294[b], 302 and 506[ii] IPC and A-2 stood charged and tried for the commission of the offences 294[b] r/w 34, 302 r/w 34, 341 and 506[ii] r/w 34 IPC. The Trial Court, vide impugned judgment dated 11.07.2018, had acquitted A-2 of all the charges framed against him and however, convicted him for the commission of the offence u/s.448 IPC and

sentenced to pay a fine of Rs.1000/-. Since A-2 had paid the fine amount, he was set at liberty. The Trial Court, acquitted the petitioner/appellant/A-1 from the charges 294[b] IPC and however, convicted him for the commission of the offences u/s.302 and 506 [ii] IPC and imposed him with the sentence of imprisonment for life and to pay a fine of Rs.2,000/- with a default sentence of rigorous imprisonment of one year for the commission of the offence u/s.302 IPC and also sentenced him to undergo rigorous imprisonment for two years for the commission of the offence u/s.506[ii] IPC and to pay a fine of Rs.1000/-, with a default sentence of six months rigorous imprisonment and further ordered the sentences to run concurrently. Challenging the legality of said conviction and sentence, the petitioner/appellant preferred the above appeal and pending appeal, he has filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The petitioner/appellant/A-1, on an earlier occasion, moved CrI.MP.No.10029/2018, praying for similar relief and it was dismissed as withdrawn on 09.10.2018 and this is the second petition praying for suspension of the substantive sentence of imprisonment.

3 Mr.D.Rajagopal, learned counsel for the petitioner has drawn the attention of this Court to the testimonies of some of the witnesses, especially, P.Ws.5 and 6 who are said to be the witnesses to the occurrence as well as the testimony of P.W.10 and would submit that the earliest information given to the police has been burked for the reason that even prior to the registration of FIR, the services of the photographer were summoned to take photographs of the body and further drawn the attention of this Court to the testimonies of P.Ws.5 and 6 and would submit that there is a grave doubt as to the place in which the occurrence had taken place, viz., as to whether it took place inside the house of P.W.6 or outside the house of P.W.6 and would further urge that the motive for the commission of the offence, had not at all existed and in the light of the grave infirmities pointed out in the testimonies of the relevant witnesses, the petitioner/appellant/A-1 is having a bright chance of success in the appeal and hence, prays for suspension of substantive sentence of imprisonment.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecution appearing for the respondent/State would submit that the testimonies of the eyewitnesses to the occurrence, viz., P.Ws.5 and 6 corroborate with each other on material particulars and had also drawn the attention of this Court to the testimony of P.W.5 and would submit that the deceased had also given a dying declaration to P.W.5 that he was stabbed by A-1, the petitioner herein, by using knife and nothing useful in favour of the accused nor contra to the case of the prosecution has been elicited in the testimony of the said witnesses and the points now urged by the learned counsel for the petitioner can be appreciated only during the course of hearing of the appeal and prays for dismissal of this petition.

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

6 A perusal of the testimonies of P.Ws.5 and 6 would *prima facie* disclose that their testimonies corroborate with each other on material particulars and that apart, P.W.5, in the chief examination, has also spoken to about the dying declaration given by the deceased. The scientific evidence has also supported the case of the prosecution that the deceased died on account of homicidal violence. Though the learned counsel for the petitioner made a vehement and forceful submission by pointing out the infirmities as to the place in which the alleged occurrence took place and also as to the burking of the earliest information by the police and that FIR, based on which, the investigation commenced, is a cooked up document, in the considered opinion of the Court, the said points can be appreciated only at the time of final disposal of the appeal. This Court, on appreciation and consideration of the materials placed, is of the considered view that this is not a fit case wherein suspension of the substantive sentence of imprisonment can be granted.

7 Hence, the miscellaneous petition stands dismissed.

-sd/-
25/02/2019

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 ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VELLORE.

2 THE INSEPCTOR OF PLICE,
GUDIYATHAM TALUK POLICE STATION,
GUDIYATHAM, VELLORE DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

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

Order

in
CRL MP.2788/2019
IN CRL.A.No.437 OF 2018

Date :25/02/2019

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

MLT-28/02/2019