

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Sixth 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.2805 of 2019

IN CRL.A.No.473 OF 2018

RAMESH (ALIAS) MUNUSAMY [PETITIONER]

Vs

THE STATE REP. BY [RESPONDENT]
INSPECTOR OF POLICE,
MELCHENGAM POLICE STATION,
THIRUVANNAMALAI DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.473 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence and condition imposed on the Petitioner/Appellant in S.C.No.66 of 2015 by the Additional Sessions, Fast Track Court, Mahila court, Thiruvannamalai on 04.7.2018. the earlier bail application in Crl.M.P.No.10474 of 2018 was withdraw as not pressed on 03.12.2018 and release the Petitioner/Appellant on bail pending disposal of the Criminal Appeal No.473 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.473 OF 2018 on the file of the High Court and upon hearing the arguments of MR.S.PRABHAKARAN SENIOR COUNSEL FOR M/S.K.BALAKRISHNAN, Advocate for the petitioner and of MR.R.PRATHAPKUMAR 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 the appellant in Crl.A.No.473/2018 and he is arrayed as A-1 out of 2 accused in SC.No.66/2015 on the file of the Court of Additional Sessions Judge and Fast Track Mahila Court, Tiruvannamalai and vide impugned judgment dated 04.07.2018, the petitioner/appellant/A-1 was found guilty for the commission of the offences u/s.498-A and 302 IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of 1 year simple imprisonment for the commission of the offence u/s.302 IPC and was sentenced to undergo 2 years rigorous imprisonment 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.498-A IPC. The above sentences were ordered to run concurrently and the period of sentence already undergone by the petitioner/appellant/A-1 was also ordered to give set off u/s.428 Cr.P.C. A-2 who is said to be the paramour of the petitioner/appellant/A-1, was acquitted and so far, no appeal has been preferred by the State against the said acquittal.

2 Mr.S.Prabakaran, learned Senior Counsel assisted by Mr.K.Balakrishnan, learned counsel for the petitioner would submit that the deceased Jothi is the wife of the petitioner/appellant/A-1 and they got married about 22 years back and out of wedlock, begot P.Ws.6 and 8 and according to the prosecution, the petitioner/appellant/A-1 developed illicit intimacy with A-2 and when it was questioned by the deceased, the petitioner/appellant/A-1 used to verbally and physically abuse her and he also sought the consent of the deceased to marry A-2 and it was refused. It is further alleged by the prosecution that 15 days prior to 18.04.2013, both A-1 and A-2 entered into criminal conspiracy to do away with the life of the wife of the petitioner/appellant/A-1, viz., Jothi @ Inbajothi [deceased] and in furtherance of the same, at about 9'o clock on 18.04.2013, the petitioner/appellant/A-1 sought the consent of the deceased to bring A-2 into home and it was refused. A-2 induced the petitioner/appellant/A-1 to commit the murder of Jothi for the purpose of continuing the illicit intimacy. Accordingly, the petitioner/appellant/A-1 poured kerosene upon the body of the deceased Jothi - his wife and set her on fire and thereby, committed the offence. P.W.1 - the brother of the deceased, on hearing upon the incident, went to the Government Hospital at Chengam and enquired wherein the deceased told him about the said incident and thereafter, he lodged a complaint, based on which, a case was registered and investigated and final report was filed.

3 The primordial submission of the learned senior counsel appearing for the petitioner/appellant/A-1 is that since the deceased has suffered almost 95% burn injuries, it was impossible for her to narrate the alleged incident of pouring kerosene by the petitioner/appellant/A-1 and set her on fire to P.Ws.1, 5 as well as to the Casualty Medical Officer who was examined as P.W.15. It is the further submission of the learned senior counsel that P.W.20-Judicial Magistrate, who recorded the dying declaration did not form any independent opinion as to the physical condition and mental state of the deceased/victim to give such statement and in the light of the infirmities pointed out, submitted that 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 Prosecutor appearing for the respondent/State would submit that the dying declaration given to P.W.1-brother of the deceased, P.W.5 as well as to P.W.15 coupled with the other oral dying declarations given to P.Ws.17 and 18 and the judicial dying declaration given to P.W.20 would amply sustain the case of the prosecution 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 impugned judgment as well as the testimonies of the witnesses would disclose that the victim has narrated the said incident to her brother, viz., P.W.1, P.W.5-wife of P.W.1, P.W.18-mother-in-law of the petitioner/appellant/A-1 and P.W.17-sister of the deceased and their testimonies corroborate with each other as to the said oral dying declaration given by the deceased. It is pertinent to point out at this juncture that P.W.15-Casualty Medical Officer has also recorded the said fact and requested the presence of the Judicial Magistrate and P.W.20-Judicial Magistrate, went to the Government Hospital at Chengam and after getting due certification from P.W.15, recorded the judicial dying declaration of the victim, which is marked as Ex.P.14. Assuming for the sake of argument that the oral dying declarations given to P.Ws.1, 5, 17 and 18 cannot be believed for the reason that they happened to be the close relative of the deceased, this Court at this stage, cannot brush aside the judicial dying declaration given to P.W.20 by the victim which came to be marked as Ex.P.14. The points urged by the learned senior counsel appearing for the petitioner/appellant/A-1 can be appreciated only at the time of final hearing of this appeal. This Court is of the considered view that this is not a fit case wherein suspension of substantive sentence of imprisonment can be granted.

7 In the result, the miscellaneous petition stands dismissed.

-sd/-

26/02/2019

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

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

TO

1 THE ADDITIONAL SESSIONS AND
FAST TRACK MAHILA JUDGE,
THIRUVANNAMALAI.

2 THE INSPECTOR OF POLICE,
MELCHENGAM POLICE STATION,
THIRUVANNAMALAI DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

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

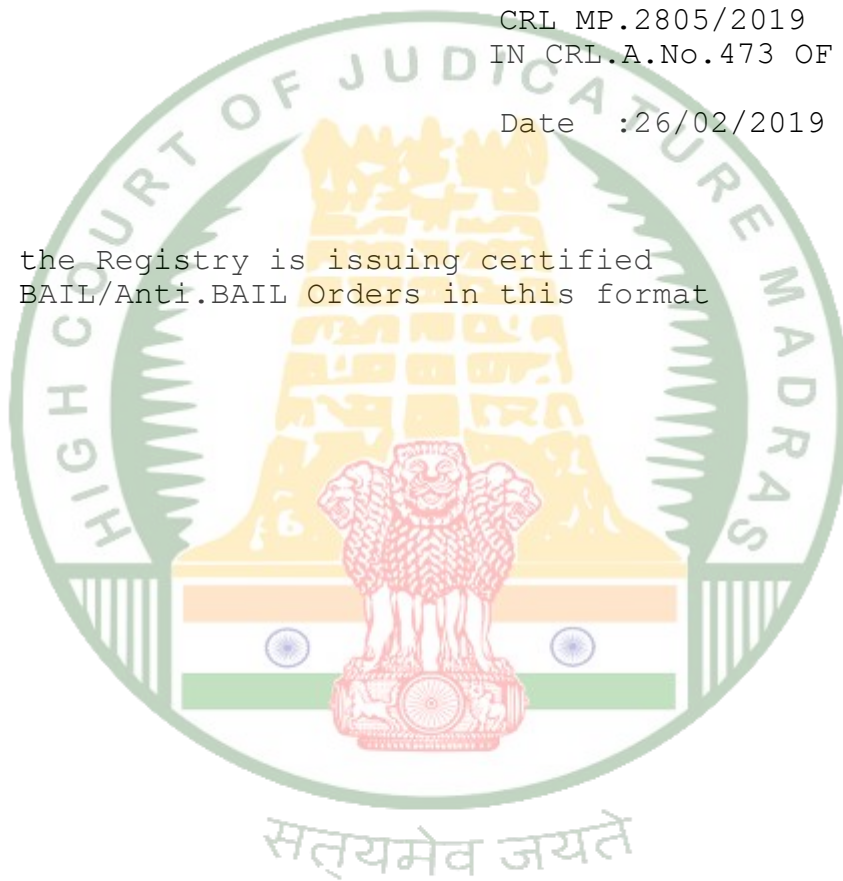
Order

in
CRL MP.2805/2019
IN CRL.A.No.473 OF 2018

Date :26/02/2019

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