

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Eighth 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.3015 of 2019

in CRL.A.NO.716/2018

SIVA @ SIVABALAN

[PETITIONER/APPELLANT]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
SALEM TOWN POLICE STATION,
SALEM DISTRICT.
CR.NO.309 OF 2014.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.716 OF 2018 on the file of the High Court, the High Court will be pleased to SUSPEND THE SENTENCE imposed in S.C.No.27 of 2015 dated 18/12/2017 by the III Additional District and Session Court, Salem and ENLARGE THE PETITIONER ON BAIL while pending disposal of the above Criminal Appeal in C.A.No.716 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.716 of 2018 on the file of the High Court and upon hearing the arguments of M/S.D.MARIOJOHNSON, Advocate for the petitioner and of MR. R.PRATHAPKUMAR, ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

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

There were totally seven accused in S.C No.273 of 2015 on the file of the Court of III Additional District and Sessions Judge, Salem. The petitioner / appellant was arrayed as Accused No.4 and he stood charged and tried for the commission of offences under Sections 120-B, 147, 148, 302 and 302 r/w 149 I.P.C. The Trial Court, vide impugned judgment dated 08.12.2017, had convicted A4 for the commission of offences under Sections 147 and 302 r/w 149 I.P.C. and imposed him the following sentences:

(i) Under Section 147 - Two years Rigorous imprisonment,

(iii) Under Section 302 - Life imprisonment and to pay a Fine of Rs.1000/- with a default to undergo 6 months imprisonment.

The petitioner / appellant / A4, challenging the conviction and sentence passed by the Trial Court, had filed this appeal and pending disposal of the same, prays for suspension of sentence by filing this Criminal Miscellaneous Petition.

2. The learned counsel appearing for the petitioner / appellant / A4 would submit that even assuming that the case of the prosecution is believable and sustainable, the petitioner / A4 along with A5 to A7 have not been attributed with any fatal overt acts and they have found present at the time of occurrence and insofar as the sentence of imprisonment awarded to A5 and A7 are concerned, the same has been suspended by this Court in CrI.A.No.10 of 2018 and therefore, prays for appropriate orders.

3. This Court heard the submission of Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State who would submit that admittedly, the petitioner along with A5 to A7 had abetted the commission of offence and the Trial Court has rightly found them guilty and imposed appropriate sentence and prays for dismissal of this petition.

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

5. The only eyewitness to the occurrence is PW5 and a perusal of the impugned judgment would disclose that the petitioner/A4 has not been attributed with any fatal overt act and he alleged to have been present at the time of commission of offence. The sentence of imprisonment awarded to Accused Nos.5 to 7, who stand on similar footing, was suspended by this Court in CrI.A.No.10 of 2018.

6. Accordingly, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner / appellant / A4, vide impugned judgment, alone is suspended with a condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties in a like sum to the satisfaction of the learned Judicial Magistrate No.1, Salem and he shall appear before the said Court on the first working day of every English calendar month at 10.30 a.m until further orders.

-sd/-
28/02/2019

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 JUDICIAL MAGISTRATE,
NO.I, SALEM.

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

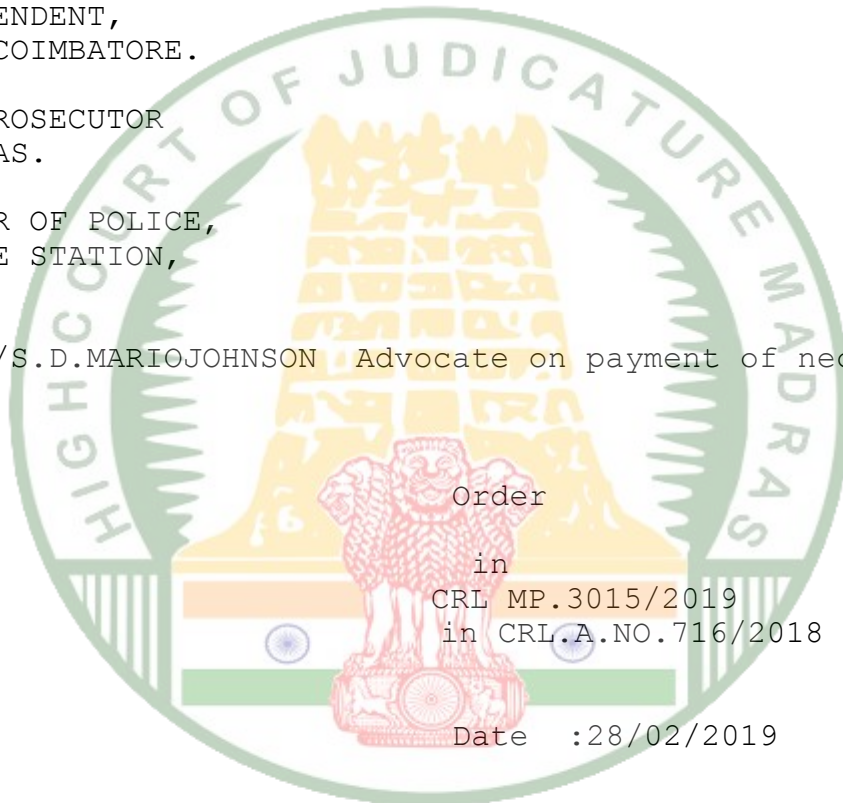
3 THE III, ADDITIONAL DISTRICT
AND SESSION COURT, SALEM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
SALEM TOWN POLICE STATION,
SALEM DISTRICT.

+1 C.C. to M/S.D.MARIOJOHNSON Advocate on payment of necessary
charges-Sr.4249



From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
THS : 04.03.2019

WEB COPY