

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Thirteenth 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.3637 of 2019

IN CRL.A.NO.117 of 2019

1 SANTHAKUMAR
2 AYYANAR

[PETITIONER/APELLANTS/
ACCUSED NO.2 AND 3]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
ANNATHANAPATTI POLICE STATION,
SALEM DISTRICT.
CR.NO.121 OF 2013.

[RESPONDENT / COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence and release the petitioner on bail pending disposal of this Criminal Appeal No.117 of 2019 before this Hon'ble Court against the judgment and conviction imposed by the Hon'ble I Additional District and Sessions Judge, Salem in S.C.No.55 of 2014 dated 22.12.2014 against the petitioners/appellants.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.S.MOHAMED ANSAR, 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.,]

The petitioners are arrayed as A-2 and A-3 out of three accused in SC.No.55/2014 on the file of the Court of I Additional District and Sessions Judge, Salem. A-1 to A-3 stood charged and tried for the commission of the offences u/s.120-B, 302, 364 and 506[ii] IPC. The trial Court, vide impugned judgment dated 22.12.2014, had found

the accused not guilty u/s.120-B IPC and however, they were found guilty for the commission of the offences u/s.364, 302 and 506[ii] IPC and imposed with a sentence of 10 years rigorous imprisonment and fine of Rs.1000/- with a default sentence of 6 months simple imprisonment for the commission of the offence u/s.364 IPC ; to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 6 months simple imprisonment for the commission of the offence u/s.302 IPC and 2 years rigorous imprisonment for the commission of the offence u/s.506[ii] IPC. The period of incarceration already undergone by them, were ordered to be set off u/s.428 Cr.P.C., and the sentences were also ordered to run concurrently. Challenging the conviction and sentence, A-1 has preferred criminal.A.No.686/2017 and A2 and A3/petitioners had preferred criminal.A.No.117/2019 and pending disposal of the present appeal, came forward to file the present miscellaneous petition seeking suspension of substantive sentence of imprisonment.

2 It is brought to the knowledge of this Court by the learned counsel for the petitioner that substantive sentence of imprisonment imposed on A-1/appellant in Crl.A.No.686/2017 was suspended vide order dated 07.02.2019 in criminal.MP.No.2168/2019.

3 Learned counsel for the petitioners / A-2 and A-3 would submit that the case of the prosecution rests upon the circumstantial evidence an the first circumstance, viz., the motive, has not been proved and that apart, the witnesses, viz., P.Ws.4 and 6, who are said to have seen the deceased in the company of the accused prior to his demise as well as P.Ws.2 and 3 who are said to have seen the accused after the commission of the offence are highly artificial and totally unbelievable and that apart, the scientific evidence in the form of

Postmortem Certificate marked as Ex.P.5 and the testimony of P.W.8, did not support the case of the prosecution and since the case projected by the prosecution bristles with very many inconsistencies and infirmities, the Trial Court, ought to have awarded benefit of doubt and acquitted them and further pointed out that in the light of the fact that insofar as A-1 is concerned, this Court has suspended the substantive sentence of imprisonment, prays for suspension of sentences of the petitioners.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that the prosecution through the testimonies of P.Ws.2, 3, 4 and 6, had proved all the chain of circumstances beyond any reasonable doubt and the points urged by the learned counsel for the petitioners can be appreciated only at the time of final hearing of this appeal and the petitioners are having bad antecedents and prays for dismissal of the petition.

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

6 The motive for commission of the offence according to the prosecution is that the deceased was employed as tea master in a Coffee Bar and A1 to A3 used to come to the said Shop very often and some days prior to the occurrence, A1 and A2 went to the Coffee Bar and demanded tea from the deceased without paying money and it was refused by the deceased and there was a wordy altercation and the deceased Saravanan poured hot water on the accused and aggrieved by the same, they took Saravanan on the pretext of buying him drinks and after administering drinks, had murdered him. P.Ws.4 and 6 had spoken about the deceased in the company of the accused prior to his demise and P.Ws.2 and 3 had spoken about the fact that on the early morning hours on 30.04.2013, they saw the accused and they asked them as to their whereabouts and they were threatened with dire consequences. Thus, prima facie, the testimonies of the said witnesses had supported the case of the prosecution. Though it is the vehement and forceful submission of the learned counsel for the petitioners that motive as well as the scientific evidence did not support the case of the prosecution. In the considered opinion of the Court, the said point revolve around adjudication on merits of the matter and deposition copies have also not been furnished in the typed set of documents. This Court is of the considered view that it is not a fit case wherein, the substantive sentence of imprisonment of the petitioners can be granted.

7 In the result, the miscellaneous petition is dismissed.

-sd/-
13/03/2019

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 I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, SALEM.

2 THE JUDICIAL MAGISTRATE,
NO.IV, SALEM,

3 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
ANNATHANAPATTI POLICE STATION,
SALEM DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

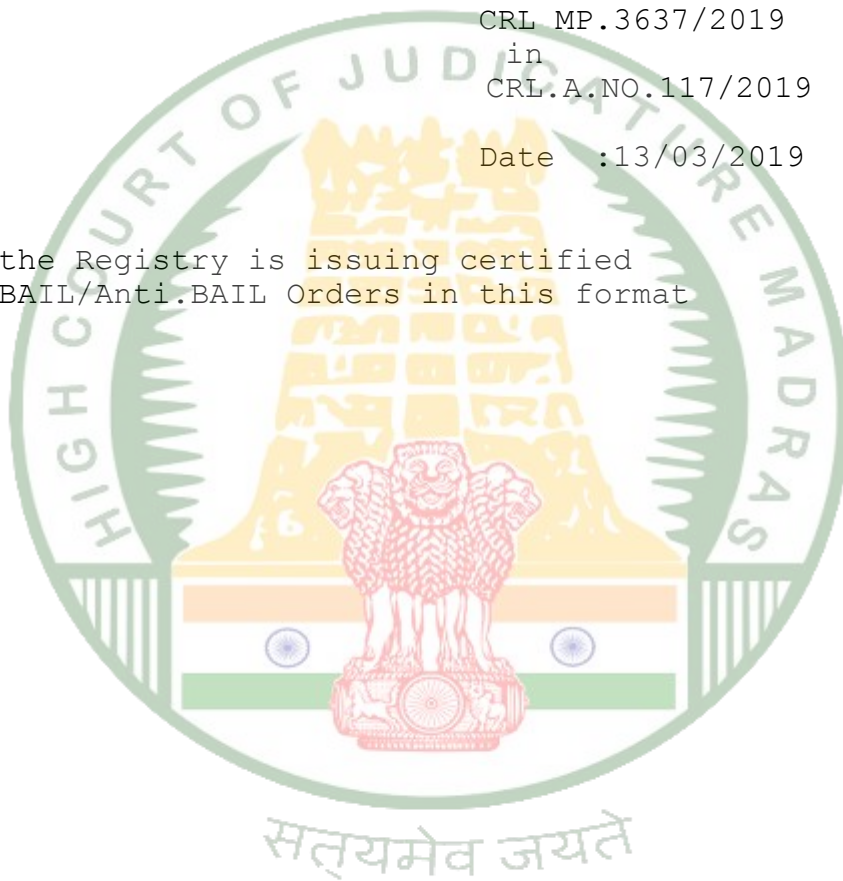
+1 C.C. to M/S.S.MOHAMED ANSAR Advocate on payment of necessary
charges SR.NO.5200

Order

in
CRL MP.3637/2019
in
CRL.A.NO.117/2019
Date :13/03/2019

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