IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eighth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.4195 of 2019

IN CRL.A.NO.155 OF 2019

RAJA [APPELLANT / ACCUSED]

Vs

THE STATE REP BY ITS [RESPONDENT]
THE INSPECTOR OF POLICE,
VEERANAM POLICE STATION,
SALEM DISTRICT
CR.NO.176 OF 2015.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.155/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in S.C.No.54 of 2016 vide Judgment dated 03.10.2018 on the file of the Learned II Additional District and Sessions Judge, Salem and enlarge the petitioner on bail pending disposal of the above CRL.A.No.155 of 2019.[CRL.MP.NO.4195/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A. No.155/2019 on the file of the High Court and upon hearing the arguments of MR.S.T.RAJA for M/S.OM SAI RAM, Advocate for the petitioner, and of MR. C.IYYAPPARAJ, ADDL. 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 arrayed as A-2 out of 4 accused in SC.No.54/2016 on the file of the Court of II Additional District and Sessions Judge, Salem and vide impugned judgment dated 03.10.2018, he along with A-1, A-3 and A-4, were found not guilty for the commission of the offence u/s.506[ii] IPC and the Trial Court had convicted the petitioner/appellant/A-2 for the commission of the offences u/s.449 and 302 IPC and imposed with a sentence of rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 1 year rigorous imprisonment for the commission of the offence u/s.302 IPC and was sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of one year rigorous imprisonment. The sentences were

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ordered to run concurrently and set-off was also granted u/s.428 Cr.P.C. Challenging the conviction and sentence, the petitioner/appellant/A-2 preferred the present appeal and pending disposal of the same, came forward to file the present miscellaneous petition seeking suspension of substantive sentences of his imprisonment.

2 The learned counsel for the petitioner/appellant would submit that the deceased is none other than the father of A-1 and P.W.5 and husband of P.W.7 and brother of P.W.1. The motive for the commission of the offence is that there was misunderstanding between the deceased Thoppagounder and A-1 and ten days prior to the commission of the offence, the deceased went to the house of A-1 and asked for his wife-P.W.7 and he was informed that after A-1 was transferred to some other place, she would come to his home and subsequently, on 11.08.2015 at about 6.00 p.m., the in-laws of P.W.7 and A-1, came to the house of the deceased and P.W.1 was also present. There was a wordy altercation and the deceased had shown the chappal to A-1 and A-1 threatened him by showing the stone and also told that he would see what he will do and on the same day, at about 9.30 p.m., P.W.1 took food for his brother/deceased and proceeded to his house and he also brought his neighbour Sundarrajan [P.W.2] and there was a noise inside the house of the deceased and P.W.1 saw A-1 standing outside the house and inside the house, they saw A-2, A-3 and yet another known person, holding koduval and assaulting the deceased repeatedly.

3 The primordial submission of the learned counsel for the petitioner/appellant/A-2 is that P.W.1 could not have been present at the time of the occurrence and also pointed out the portion of testimony of his cross-examination and would submit that he is also closely related to the deceased and his evidence has not been amply corroborated by the yet another eyewitness to the occurrence, viz., P.W.3 and that apart, the recovery as against the petitioner/appellant/A-2 is also highly doubtful and in the light of the said infirmities, the petitioner/appellant/A-2 is having a bright chance of success in the appeal and hence, prays for suspension of the substantive sentences of imprisonment.

4 *Per contra*, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor would submit that submit that admittedly, the case of the prosecution rests upon the eyewitness account and the testimonies of P.Ws.1 and 3 amply corroborate with each other on all material particulars and the points urged by the learned counsel for the petitioner/appellant/A-2 can be considered only at the time of advancing the final arguments in the appeal and hence, prays for dismissal of the petition.

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

6 It is to be noted at this juncture that P.Ws.1 and 2 were examined in chief on 11.04.2017 and they were cross examined only on

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12.09.2017, i.e., nearly after 5 months and though the learned counsel for the petitioner/appellant/A-2 had pointed out certain discrepancies, the testimonies of the said eyewitnesses would *prima facie* would corroborate with each other on material particulars as to the overt act on the part of this petitioner/appellant/A-2. As rightly pointed out by the learned Additional Public Prosecutor, the other points urged by the learned counsel for the petitioner/appellant/A-2 can be considered only at the time of final disposal of this appeal. This Court, on a careful scrutiny of the entire materials, is prima facie of the view that this is not a fit case wherein suspension of substantive sentences of imprisonment can be granted.

7 In the result, the miscellaneous petition is dismissed.

-sd/-
08/04/2019

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

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

TO

1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SALEM

2 THE SUPERINTENDENT,
CENTRAL PRISON,SALEM

3 THE INSPECTOR OF POLICE,
VEERANAM POLICE STATION,
SALEM DISTRICT

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.OM SAI RAM Advocate on payment of necessary charges

Order

in
CRL MP.4195/2019

IN CRL.A.NO.155 OF 2019

Date :08/04/2019

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