

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twentieth day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.4328 of 2019

IN CRL.A.NO.162 OF 2019

MURUGAN

[PETITIONER]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
PEERKANKARANAI POLICE STATION,
PEERKANKARANAI,
CHENGALAPET DISTRICT.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.162/2019 on the file of the High Court, the High Court will be pleased to enlarge the petitioner appellant on bail by suspending the sentence imposed in S.C.No.144 of 2009 on the file of the Learned Additional District and Sessions Judge, Chengalpet, Chengalpet District on 31.07.2018 pending disposal of the above appeal in C.A.NO.162/2019.[CRL.MP.NO.4328/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.162/2019 on the file of the High Court and upon hearing the arguments of M/S.R.RAJAN 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.M.SUNDRESH,J)

The petitioner is the sole accused in S.C.No.144 of 2009 on the file of the Additional District and Sessions Judge, Chengalpet, Chengalpet District. The trial Court, convicted the petitioner for the offence punishable under Sections 302 and 201 r/w 302 IPC and for the offence under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- in default, to undergo rigorous imprisonment for one year and for the offence punishable under Section 201 r/w 302 IPC sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months and ordered the sentences to run concurrently.

2. The case of the prosecution is that due to previous enmity which arose in a land dispute between the petitioner and deceased, the petitioner on 31.08.2008 attacked the deceased with the terracotta utensil and thereafter with the hollow block. The complaint has been given by P.W.1. The trial Court convicted the petitioner based upon the last seen theory and on the evidence of P.W.9. Challenging the same, the present appeal has been filed. Pending appeal, this petition has been filed seeking suspension of sentence.

3. The learned counsel appearing for the petitioner would submit that motive has not been established. There is a delay in the First Information Report reaching the jurisdictional Magistrate. Even the FIR has not been given immediately. P.W.9 though claimed to be the eye witness has not given the complaint. The trial Court has not considered the abovesaid aspect. The petitioner has been under incarceration for more than one year. Hence, the sentence of the petitioner will have to be suspended.

4. The learned Additional Public Prosecutor appearing for the State would submit that though the prosecution relied upon the last seen theory, there is eye witness available in the form of P.W.9. The trial Court considered this aspect coupled with the recovery, convicted the petitioner. Therefore, this petition will have to be dismissed.

5. The petitioner has been under incarceration for more than one year. We do find arguable points available in the appeal. Admittedly, the complaint has not been given by P.W.9 - the eye witness.

6. Considering the above, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Tambaram and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

20/08/2019

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, CHENGALPET

2 THE JUDICIAL MAGISTRATE,
TAMBARAM

3 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU [FOR INFORMATION]

4 THE OFFICER IN CHARGE
SUB-JAIL, CHENGALPATTU

5 THE INSPECTOR OF POLICE,
PEERKANKARANAI POLICE STATION,
PEERKANKARANAI,
CHENGALAPET DISTRICT.

+1 C.C. to M/S.R.RAJAN Advocate on payment of necessary charges
SR.NO. 17260

Order

in
CRL MP.4328/2019

IN CRL.A.NO.162 OF 2019

Date : 20/08/2019

From 7.2.2001 the Registry is issuing certified
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RD 20/08/2019

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