

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Fourth 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 Nos.4300 and 4815 of 2019

in CRL.A.Nos.614 and 715 of 2018

1 ARUL KUMAR @ ARUNKUMAR
2 SANTHOSH KUMAR
3 SASIKUMAR
4 PALANISAMY

[PETITIONERS / APPELLANTS
in CRL.MP.No.4300 of 2019]

VIVEKANANDAN

[PETITIONER / APPELLANT
in CRL.MP.No.4815 of 2019]

Vs

THE INSPECTOR OF POLICE
TALUK POLICE STATION,
CHIDAMBARAM,
CUDDALORE DISTRICT.
CRIME NO.33 OF 2013

[RESPONDENT]
in CRL.MP.No.4300 of 2019]

THE INSPECTOR OF POLICE
CHIDAMBARAM TALUK POLICE STATION,
CHIDAMBARAM TALUK,
CRIME NO.86 OF 2013

[RESPONDENT]
in CRL.MP.No.4815 of 2019]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No. on the file of the High Court, the High Court will be pleased to suspend the sentence

(i) suspend the sentence imposed on the petitioners made in SC No.70 of 2014 dated 20.09.2018 passed by the learned 2nd Additional District and Sessions Judge, Chidambaram and enlarge the petitioners on bail pending disposal of the main Crl.A.No.614 of 2018

(ii) suspend the sentence imposed in S.C.No.70 of 2014 by the learned II Additional District and Sessions Judge, Chidambaram and enlarge him on bail pending disposal of the CRL.A.No.715 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.Nos.614 and 715 of 2018 on the file of the High Court and upon hearing the arguments of M/s.E.SATHISH BABU Advocate for the petitioner in CRL.MP.No.4300 of 2019 in CRL.A.No.614 of 2018, and MR.M.SHAHJAHAN Advocate for the petitioner in CRL.MP.No.4815 of 2019 in CRL.A.No.715 of 2018, 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 learned counsel appearing for the petitioners in Crl.MP.No.4300/2019 in Crl.A.No.614/2018, on instructions, seeks permission of this Court to withdraw this petition insofar as petitioners No.1 to 3 / A-3, A-4 and A-5 are concerned and has also made an endorsement in the petition to that effect and he is pressing the petition for suspension of the substantive sentence of imprisonment in respect of the 4th petitioner/A-9 is concerned. Accordingly, the petition in **Crl.MP.No.4300/2019 in Crl.A.No.614/2018** is **dismissed insofar as petitioners 1 to 3/A-3, A-4 and A-5 are concerned.**

2 The 4th petitioner in Crl.MP.No.4300/2019 in Crl.A.No.614/2018 is arrayed as A-9 and the petitioner in Crl.MP.No.4815/2019 in Crl.A.No.715/2018 is arrayed as A-7 out of 14 accused in SC.No.70/2014. A-7 and A-9 were found guilty for the commission of the offences u/s.147, 294-B, 436, 302 read with 149 IPC and the Trial Court, vide impugned judgment dated 20.09.2018, had convicted A-7 and A-9 for the commission of the above said offences and sentenced each of them to undergo imprisonment as follows:-

Rank of the Accused	Conviction under section	Sentence imposed
A-7 and A-9	147 IPC	Each of the accused was sentenced to undergo 6 months rigorous imprisonment.
	294-B IPC	Each of the accused was sentenced to pay a fine of Rs.250/- each, with a default sentence of one month simple imprisonment.
	436 IPC	Each of the accused was sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.2000/- each, with a default sentence of 1 year simple imprisonment.
	302 r/w 149 IPC	Each of the accused was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- each, with a default sentence of 1 year simple imprisonment.

Set-off was also granted to them u/s.428 Cr.P.C. Challenging the said conviction and sentences, A-7 and A-9 had preferred the present appeals and pending appeal, they had filed the present petitions seeking suspension of the substantive sentences of their imprisonment.

3 The facts leading to the present petitions have been narrated in detail and in extenso in the order dated 08.03.2019 made in CrI.MP.No.3222/2019 in CrI.A.No.769/2018 and therefore, it is unnecessary to re-state the facts once again.

4 The respective learned counsel appearing for the petitioners/A-7 and A-9 would submit that except the testimonies of the eyewitnesses, viz., P.Ws.3 and 4, no other materials have been produced by the prosecution to speak about the fatal overt acts on the part of the petitioners herein/A-7 and A-9 and even assuming for the sake of argument, that their testimonies are credible and trustworthy, the overt act attributed against A-7 and A-9 is that they set fire to the thatched house in which the deceased was residing and on seeing the fire, the deceased came out of the house and he was fatally attacked by A-1 to A-4 and the deceased had died on account of head injuries. It is also brought to the knowledge of this Court that this Court, in its order dated 06.12.2018 made in CrI.MP.No.15914/2018 in CrI.A.No.769/2018 as well as in the order

dated 08.03.2019 made in Crl.MP.No.3222/2019 in Crl.A.No.769/2018, has considered the plea of the accused, who are similarly placed and suspended their substantive sentences of imprisonment.

5 Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State, on instructions, would submit that apart from the present case, A-7 and A-9 are not having any antecedents / not involved in commission of any other offences.

6 In the light of the above facts and circumstances, this Court is of the considered view that the 4th petitioner in Crl.MP.No.4300/2019 in Crl.A.No.614/2018 and the petitioner in Crl.MP.No.4815/2019 in Crl.A.No.715/2018 are entitled for the relief of suspension of their substantive sentences of imprisonment.

7 In the result, the petition in **Crl.MP.No.4300/2019** in Crl.A.No.614/2018 **insofar as the 4th petitioner/A-9** and the petition in **Crl.MP.No.4815/2019** in **Crl.A.No.715/2018** are **ordered** and the substantive sentences of imprisonment alone in respect of the 4th petitioner/A-9 in Crl.MP.No.4300/2019 in Cr.A.No.614/2018 and in respect of the petitioner in Crl.MP.No.4815/2019 in Crl.A.No.715/2018 are suspended and they are directed to be enlarged on bail on condition that the 4th petitioner/A-9 in Crl.MP.No.4300/2019 in Cr.A.No.614/2018 and the petitioner in Crl.MP.No.4815/2019 in Crl.A.No.715/2018 shall execute individual bonds 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, No.2, Chidambaram and on further condition that they shall appear before the Committal Court, viz., the Court of Judicial Magistrate, No.2, Chidambaram [PRC.No.33/2013] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

सत्यमेव जयते
-sd/-

24/04/2019

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 II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHIDAMBARAM

2 THE JUDICIAL MAGISTRATE NO.II
CHIDAMBARAM

3 THE JUDICIAL MAGISTRATE
CHIDAMBARAM

4 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

5 THE SUPERINTENDENT,
CENTRAL PRISON,
CUDDALORE

6 THE INSPECTOR OF POLICE
TALUK POLICE STATION,
CHIDAMBARAM,
CUDDALORE DISTRICT

7 THE INSPECTOR OF POLICE
CHIDAMBARAM TALUK POLICE STATION
CHIDAMBARAM TALUK

+1 C.C. to M/S.N.SATHISH BABU Advocate on payment of necessary
charges SR.NO.8237

+1 C.C. to M/S.M.SHAHJAHAN Advocate on payment of necessary
charges SR.NO.8260

Order

in

CRL MP.Nos.4300 & 4815 of 2019

in

CRL.A.Nos.614 and 715 of 2018

Date :24/04/2019

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