

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fifteenth 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.4620 of 2019

in CRL.A.No.174 of 2019

ANAND

[PETITIONER/APPELLANT]

Vs

THE STATE REP BY ITS,
THE STATION HOUSE OFFICER,
KALLAKURICHI POLICE STATION,
VILLUPURAM DISTRICT
CRIME NO.363 OF 2017.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.174 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in S.C.No.96 of 2018 on the file of the III Additional District and Sessions Court, Kallakurichi, Villupuram District dated 22.02.2019 and release him on bail pending disposal of the above CRL.A.No.174 of 2019

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.174 of 2019 on the file of the High Court and upon hearing the arguments of M/S.A.G.RAJAN, 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 / appellant, viz., Anand, son of Anbazhagan, is arrayed as A-7 out of 8 accused in SC.No.96/2018 on the file of the Court of II Additional District and Sessions Judge, Kallakurichi. The petitioner/appellant was prosecuted along with A-1 to A-6 for the commission of the offences u/s.120-B, 120-B read with 302, 449, 148, 147, 364, 386, 302, 302 read with 149 and 201 read with 302 IPC. Insofar as the petitioner/appellant/A-7 is concerned, he is charged for the commission of the offences u/s.120-B read with 302 and 201

read with 302 IPC and the Trial Court, vide impugned judgment dated 22.02.2019, has convicted him for the said offences and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of one month simple imprisonment for the commission of the offence u/s.120-B read with 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 month simple imprisonment. The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the petitioner/appellant/A-7 preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentences of imprisonment.

2 It is brought to the knowledge of this Court that pending questioning u/s.313[1] Cr.P.C., A-4, viz., Kumar, died and A-6, viz., Benjamin, died after filing of the Final Report.

3 The learned counsel appearing for the petitioner/appellant/A-7 would submit that the motive for the commission is that the deceased Benjamin [A-6] was born to the second wife of his grandfather Joseph @ Chinnapayan and one Samuel, father of the deceased Joseph Rathinakumar, was born to the first wife of the said Joseph @ Chinnapayan and there existed property dispute between the families of Benjamin [A-6] and Samuel and the said dispute was going on for 24 years and the prime accused, intend to get the disputed property in their favour by forcefully asking the deceased Joseph Rathinakumar, to execute necessary document and however, the deceased did not do so and hence, the accused committed the murder. Insofar as the overt act attributed to the petitioner/appellant/A-7 is concerned, he is the owner of the two-wheeler marked as M.O.1 and the assailants, after committing the offence, were returning in an auto and it stopped for want of fuel and the petitioner/appellant/A-7 procured fuel for the said auto.

4 The learned counsel appearing for the petitioner/appellant/A-7 would submit that though P.W.3 is said to have witnessed the occurrence, admittedly, he did not identify the assailants and even for the sake of arguments, he has identified them, still the petitioner/appellant/A-7 has not been attributed with any fatal overt act except the above said allegation of procurement of fuel to auto. According to the prosecution, though the two-wheeler involved in the commission of the offence, belonged to A-7, it was projected as if the two-wheeler belonged to A-2. In sum and substance, it is the submission of the learned counsel for the petitioner/appellant/A-7 that in the absence of any specific fatal overt act coupled with no evidence is forthcoming as to the conspiracy, and the evidence let in by the prosecution for screening of the evidence, is also feeble, the petitioner/appellant/A-7 is having a bright chance of success in this appeal and hence, prays and prays for suspension of the substantive sentence of imprisonment.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the prosecution witnesses has cogently spoken about the specific overt acts attributed against each of the accused and their testimonies corroborate with each other on all materials particulars and the Trial Court was right in convicting and sentencing the petitioner/appellant/A-7 and prays for dismissal of this petition.

6 This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

7 A perusal of the testimony of P.W.4 would *prima facie* indicate that he has not even identified the inmates of the auto and the only overt act attributed against this petitioner/appellant/A-7 is that he procured fuel for the auto in which the assailants were said to have travelled after committing the murder of the deceased. Insofar as the projection of the case that the two-wheeler [M.O.1] belonged to A-7, it actually belonged to A-2. This Court, is *prima facie* of the view that the evidence let in by the prosecution in that regard, is very feeble and the petitioner/appellant/A-7 have not been attributed with any fatal overt act and apart from this, it is also brought to the knowledge of this Court that the petitioner/appellant/A-7 is not having any antecedents. In the light of the above facts and circumstances, the petitioner/appellant/A-7 is entitled for suspension of the substantive sentences of imprisonment pending this appeal.

8 In the result, the petition is **ordered** and the substantive sentence of imprisonment alone in respect of the petitioner/appellant/A-7 is suspended and the petitioner/appellant/A-7 directed to be enlarged on bail on condition that the petitioner/appellant shall execute 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, No.I, Kallakurichi and on further condition that the petitioner/appellant/A-7 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, No.1, Kallakurichi [PRC.No.26/2017] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-
15/04/2019

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 JUDICIAL MAGISTRATE NO.I
KALLAKURICHI, VILLUPURAM DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM [FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT AND SESSIONS COURT,
KALLAKURICHI,
VILLUPURAM DISTRICT

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

6 THE STATION HOUSE OFFICER,
KALLAKURICHI POLICE STATION,
VILLUPURAM DISTRICT

+1 C.C. to M/S.A.G.RAJAN Advocate on payment of necessary
charges SR.NO.7731

Order

in

CRL MP.4620/2019

in

CRL.A.No.174/2019

Date :15/04/2019

सत्यमेव जयते

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