

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the 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.4678 and 4680 of 2019

in CRL.A.Nos.611 and 312 of 2018

VELU

[PETITIONER /APPELLANT
in CRL.M.P.No.4678 of 2019]

DURAI

[PETITIONER /APPELLANT
in CRL.M.P.No.4680 of 2019]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
MELCHENGAM POLICE STATON,
TIRUVANNAMALAI DISTRICT.

[RESPONDENT
in both petitions]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.Nos.611 and 312 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment passed against the Petitioner Appellant in S.C.No.200 of 2007 on the file of District and Sessions Judge, Tiruvannamalai by Judgment dated 05.12.2017 and release the petitioner on bail pending disposal of the above [CRL.A.Nos.611 & 312 of 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.Nos.611 and 312 of 2018 on the file of the High Court and upon hearing the arguments of M/S.V.PRAKASH BABU, in both petitions Advocate for the petitioner and of MR.R.PRATHAP KUMAR Additional Public Prosecutor on behalf of the Respondent, in both petitions the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner in Crl.MP.No.4678/2019 in Crl.A.No.611/2018 is arrayed as A-1 and the petitioner in Crl.MP.No.4680/2019 in Crl.A.No.312/2018 is arrayed as A-2 and vide impugned judgment dated 05.12.2017 made in SC.No.200/2007, the learned District and Sessions Judge, Tiruvannamalai, has convicted and sentenced the accused as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A-1	120-B and 302 IPC and sections 3 and 25[1][b] of the Indian Arms Act	To undergo imprisonment for life for the commission of the offence u/s.120-B IPC and to undergo imprisonment for life and to pay a fine of Rs.2000/- with a default sentence of 2 years rigorous imprisonment for the commission of the offence u/s.302 IPC and to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of 2 years rigorous imprisonment for each of the offences u/s.3 and 25[1][b] of the Arms Act.
A-2	120-B and 302 read with 109, 34 IPC and sections 3 and 25[1][b] of the Indian Arms Act	To undergo imprisonment for life for the commission of the offence u/s.120-B IPC and to undergo imprisonment for life and to pay a fine of Rs.2000/- with a default sentence of 2 years rigorous imprisonment for the commission of the offence u/s.302 r/w 109, 34 IPC and to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of 2 years rigorous imprisonment for each of the offences u/s.3 and 25[1][b] of the Arms Act.

The sentences were ordered to run concurrently and they were also granted set-off u/s.428 Cr.P.C. Challenging the said conviction and sentence, A-1 has preferred Criminal Appeal in Crl.A.No.611/2018 and A-2 has preferred Criminal Appeal in Crl.A.No.312/2018 and pending appeals, they had filed the present miscellaneous petitions seeking suspension of their substantive sentences of imprisonment.

2 Both the petitioners/appellants had, on an earlier occasion, filed CrI.MP.Nos.13516/2018 and 7439/2018 in CrI.A.Nos.611/2018 and 312/2018 praying for suspension of the substantive sentences of imprisonment and both petitions were dismissed as withdrawn on 20.11.2018.

3 The learned counsel for the petitioners/appellants would submit that the motive for the commission of the offence is that the deceased was indulging in manufacturing illicit liquor and the jaggery for that purpose, was used to be supplied by A-1 through A-2 and in the process, A-2 developed illicit intimacy with the wife of the deceased, viz., P.W.4 and though the said act of A-2 and P.W.4 was castigated by the deceased, they continued the said relationship and having felt that the deceased is a hindrance to such a relationship, has hatched a conspiracy and accordingly, they procured a country made gun and murder was committed by A-1 by firing the gun upon the deceased, who on account of injuries sustained, died. The primordial submission of the learned counsel for the petitioners/appellants is that admittedly, the country made gun used for the commission of the offence, has not been recovered at all and except the testimonies of the interest witnesses, viz., P.Ws.1 and 2, none of the witnesses had supported the case of the prosecution and further, pointed out that even the scientific evidence did not probablise the fact of gun shot injuries and since the case projected by the prosecution is bristled with very many infirmities and inconsistencies, the Trial Court, ought to have awarded benefit of doubt to both accused and since the chance of success is very bright to both the petitioners/appellants, prays for suspension of substantive sentences of imprisonment.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the testimonies of P.Ws.1 and 2 corroborate with each other on all material particulars and it is also amply supported by the scientific evidence and the Trial Court, on a proper appreciation and consideration of the oral and documentary evidences, had rightly reached the verdict and prays for dismissal of this petition.

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

6 A perusal and consideration of the testimonies of P.Ws.1 and 2 would *prima facie* disclose that A-1 [petitioner in CrI.MP.No.4678/2019 in CrI.A.No.611/2018] fired the country made gun upon the deceased, who died on account of the said injuries. The

testimony of P.W.9 coupled with the Postmortem Certificate marked as Ex.P.6 would disclose that the deceased died on account of shock and hemorrhage due to bullet injury sustained on his chest and lung. Both P.Ws.1 and 2 had spoken about the role played by A-1 ; but they have not even spoken about the presence of A-2. The only evidence projected by the prosecution is the extra-judicial confession said to have been given by A-1 to P.W.5, which does not disclose the role played by A-2 in the commission of the offence and as such, this Court is of the considered view that **A-2** [petitioner in Crl.MP.No.4680/2019 in Crl.A.No/312/2018] is **entitled** for the suspension of the substantive sentences of imprisonment. In the light of the testimonies of P.Ws.1 and 2 coupled with the scientific evidence, this Court is of the considered view that **A-1** [petitioner in Crl.MP.No.4678/2019 in Crl.A.No.611/2018] is **not entitled** for the relief of suspension of sentence.

7 In the result, **CRL.MP.No.4678/2019 IN CRL.A.No.611/2018** is **dismissed** and the petition in **Crl.MP.No.4680/2019 in Crl.A.No.312/2018** is **ordered** and the substantive sentences of imprisonment alone in respect of the petitioner/appellant/A-2 is suspended and the petitioner/appellant/A-2 directed to be enlarged on bail on condition that the petitioner/appellant/A-2 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, Chengam and on further condition that the petitioner/appellant/A-2 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, Chengam, on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-
04/04/2019

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

सत्यमेव जयते
TRUE COPY

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

TO

1 THE DISTRICT AND SESSIONS JUDGE,
THIRUVANNAMALAI

2 THE JUDICIAL MAGISTRATE,
CHENGAM,
THIRUVANNAMALAI DISTRICT

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
MELCHENGAM POLICE STATON,
TIRUVANNAMALAI DISTRICT.

+2 C.C. to M/S.V.PRAKASH BABU Advocate on payment of necessary
charges SR.NO.7026, 7027

Order

in

CRL MP.Nos.4678 & 4680/2019

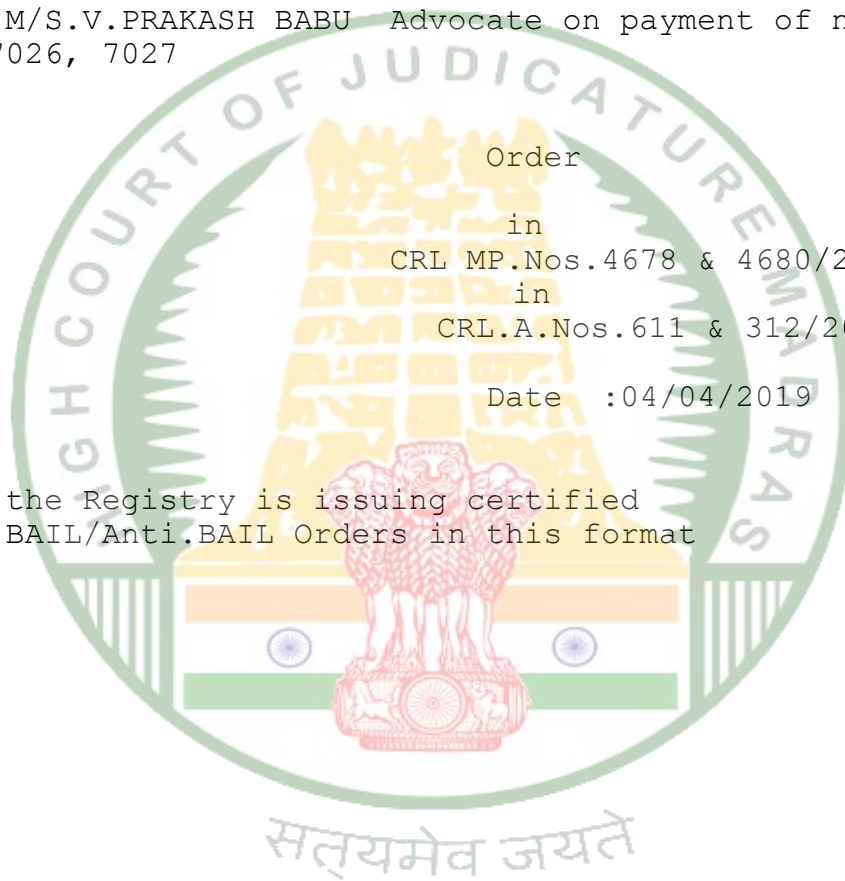
in

CRL.A.Nos.611 & 312/2018

Date :04/04/2019

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cm 11/04/2019



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