

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 No.4843 of 2019

IN CRL.A.NO.194 of 2019

SOUNDARRAJAN

[PETITIONER]

Vs

STATE BY

THE INSPECTOR OF POLICE,
THANIPADI POLICE STATION,
TIRUVANNAMALAI DISTRICT.
CR.NO.441 OF 2012.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner herein by the learned Judgment of the learned Principal District and Sessions Judge, Tiruvannamalai, Tiruvannamalai District made in S.C.No.78 of 2013 by Judgment dated 05.03.2019 on her file, convicting the petitioner herein for the offence under section 302 IPC read with 34 IPC and sentencing him to undergo life imprisonment and to pay fine of Rs.5000/- in default to undergo two years Rigorous Imprisonment and enlarge him on bail pending disposal of the above Crl.A.No.194 of 2019.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.L.MAHENDRAN, 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.SATHYANARAYANAN, J.]

The petitioner is arrayed as A-2 out of 2 accused in SC.No.78/2013 on the file of the Court of Principal District and Sessions Judge, Tiruvannamalai. There were 2 accused in the said case

and A-1 was charged for the commission of the offence u/s.302 IPC and the petitioner/A-2 was charged for the commission of the offence u/s.302 read with 34 IPC. The Trial Court, vide impugned judgment dated 05.03.2019, has found A-1 guilty for the commission of the offence u/s.302 IPC and he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of 2 years rigorous imprisonment and the petitioner/A-2 was found guilty of the commission of the offence u/s.302 read with 34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of 2 years rigorous imprisonment. Set-off was also granted to u/s.428 Cr.P.C. Challenging the said conviction and sentence, the accused persons, viz., A-1 and A-2 preferred the present appeal and pending appeal, the petitioner/A-2 had filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The learned counsel appearing for the petitioner/A-2 has drawn the attention of this Court to the impugned judgment and would submit that according to the prosecution, the deceased was attending his relatives marriage and A-1 and A-2 were dancing in the procession and it was questioned by the deceased and a wordy altercation took place and in the process, the petitioner/A-2 caught hold of the deceased while A-1 stabbed the deceased with a knife [M.O.1] on the left side of his chest and as a consequence, he died. There were four eyewitnesses to the occurrence, viz., P.Ws.1, 2,3 and 6 and even according to them, there was a wordy quarrel just prior to the commission of the alleged offence and enraged by the same, A-1 caused the murder by using M.O.1-knife and the petitioner/A-2 caught hold of the deceased. In sum and substance, it is the submission of the learned counsel for the petitioner/A-2 that since the petitioner/A-2 has not been attributed with any fatal overt act and admittedly, there was a wordy altercation preceding the occurrence and that there are very many inconsistencies and improbabilities in the witnesses rendered by the prosecution, the petitioner/A-2 is having a bright chance of success in this appeal and hence, prays for suspension of the substantive sentence of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that but for the act of the petitioner/A-2, the deceased would have escaped and the testimonies of the eyewitnesses corroborate with each other on all materials particulars and prays for dismissal of this petition.

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

5 Even as per the admitted version of the eyewitnesses, the occurrence is said to have happened at the spur of the moment and there was a wordy altercation just prior to the commission of the offence and the fatal overt act has been attributed only against A-1. It is also brought to the knowledge of this Court by the learned Additional Public Prosecutor that the petitioner/A-2 is not having any antecedents. This Court, taking into consideration of the facts and circumstances and also the submissions made by the learned counsel for the petitioner/A-2, is of the considered view that it is a fit case wherein, suspension of substantive sentence of imprisonment is to be granted.

6 In the result, the petition is **ordered** and the substantive sentence of imprisonment alone in respect of the petitioner/A-2 is suspended and the petitioner/A-2 is directed to be enlarged on bail on condition that the petitioner/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/A-2 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, Chengam [PRC.No.13/2013] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-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 JUDICIAL MAGISTRATE,
CHENGAM.

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVANNAMALAI. [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
THANIPADI POLICE STATION,
TIRUVANNAMALAI DISTRICT.

+1 C.C. to M/S.L.MAHENDRAN Advocate on payment of necessary
charges SR.NO.8270

Order

in
CRL MP.4843/2019
in
CRL.A.NO.194/2019

Date :24/04/2019

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