

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Sixth 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.6690 of 2019

in CRL.A.No.203 OF 2019

BABU @ THILAGAR BABU

[PETITIONER]

Vs

THE INSPECTOR OF POLICE
VALAVANUR POLICE STATION,
VILLUPURAM DISTRICT.
CR.NO.262 OF 2013

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.203 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed upon the Appellant by the Additional District Judge (Fast Track Court), Villupuram District in SC No.610/2013 dated 05.02.2019 and release the Appellant on Bail pending disposal of the above Crl.A.No.203 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.203 OF 2019 on the file of the High Court and upon hearing the arguments of MR.MOHAN, ADVOCATE FOR M/S S.SENTHIL KUMAR, Advocate for the petitioner and of M/S.R.PRATHAP KUMAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by JUSTICE M.M.SUNDRESH]

The petitioner/appellant is the sole accused in S.C.No.610 of 2013 on the file of the learned Additional Sessions Judge, Fast Track Court, Villupuram, Villupuram District. After full-fledged trial, by judgement dated 05.02.2019, the learned Additional Sessions Judge has convicted the petitioner/appellant for offence under Sections 324 and 302 of IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.3,000/- in default to suffer simple imprisonment for a further period of one month for offence under Section 324 of IPC and to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for a further period of six months for offence under Section 302 of IPC. Seeking suspension of sentence, the petitioner/appellant is before this Court with this miscellaneous petition.

2. The petitioner and the deceased as well as the P.W.1 are close relatives. The case of the prosecution is that pursuant to the property dispute, the petitioner attacked the deceased and P.W.1 with knife and committed the offence. The trial court primarily relying upon the evidence of P.W.1 coupled with the recovery, convicted the petitioner for offence under Sections 302 and 324 of IPC and sentenced him accordingly.

3. The learned counsel for the petitioner submitted that the motive has not been established by the prosecution. There are discrepancies in the evidence of P.W.1. Most of the prosecution side witnesses have turned hostile. Even the witnesses who have attested the recovery mahazar turned hostile. The petitioner has been under incarceration from 05.02.2019 onwards. Thus, according to the learned counsel, there are arguable in the appeal for acquittal and, therefore, the petition for suspension of sentence will have to be allowed.

4. The learned Additional Public Prosecutor submitted that P.W.1 is the injured eye-witness. Though the other witnesses have turned hostile, P.W.6 and P.W.7, being son and son-in-law of P.W.1, have spoken in tune with the case of the prosecution. After having considered the available evidence, the trial court has rightly convicted the petitioner for the offences under Sections 302 and 324 of IPC and sentenced him accordingly. Therefore, this petition will have to be dismissed.

5. The petitioner has been under incarceration from 05.02.2019 onwards. Admittedly, the petitioner and P.W.1 as well as the deceased are close relatives. We also find that other than P.W.1, who is the wife, P.W.6, the son and P.W.7, the son-in-law of the deceased, most of the witnesses have turned hostile. Even the Village Assistant, who was examined to speak about the recovery, has turned hostile and he did not support the case of the prosecution.

6. Considering the above, we are inclined to allow this petition. 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 Judicial Magistrate-II, Villupuram, Villupuram District, and on further condition that the petitioner shall appear before the learned Magistrate-II, Villupuram, on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

06/08/2019

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

TRUE COPY

TO

1 THE JUDICIAL MAGISTRATE,
NO.II, VILLUPURAM

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM(FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
VALAVANUR POLICE STATION, VILLUPURAM
DISTRICT.

5 ADDITIONAL SESSIONS JUDGE,
FAST TRACK COURT, VILLUPURAM,
VILLUPURAM DISTRICT.

6 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

C.C. to M/S.S.SENTHIL KUMAR Advocate on payment of necessary
charges SR.NO.16368

Order
in
CRL MP.6690/2019

in CRL.A.No.203 OF 2019

Date :06/08/2019

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RVR 08/08/2019

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