

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Ninth 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.9500 of 2019

IN CRL A.439/2019

G.ANTHONY

[PETITIONER / APPELLANT]

Vs

STATE BY INSPECTOR OF POLICE, [RESPONDENT]
VELANKANNI POLICE STATION,
NAGAPATTINAM DISTRICT,
CRIME NO.252/2012.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.439/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the judgment dated 25.06.2019 made in S.C.No.80 of 2013 on the file of the Sessions Court, Nagapattinam and enlarge the petitioner on bail pending disposal of the above CRL A.439/2019 [IN CRL.MP.NO.9500 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.439/2019 on the file of the High Court and upon hearing the arguments of M/S.SWAMINATHAN A., Advocate for the petitioner and of MR.C.IYYAPPARAJ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioner is the sole accused in S.C.No. 80 of 2013 on the file of Sessions Court, Nagapattinam. The trial Court by judgment dated 25.06.2019 convicted the petitioner for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for three months. Seeking suspension of sentence, the present petition has been filed.

2. The learned counsel appearing for the petitioner would submit it is a case of circumstantial evidence. The motive has not been proved. The evidence of P.W.2 cannot be accepted having been given belatedly. The case was originally registered under Section

174 Cr.P.C. There is a material contradiction between the evidence of P.Ws 1,2 and 7 as against P.W.5 is the witness who signed the recovery mahazar. These witnesses namely P.Ws.1,2 and 7 have stated that the material object which was used for attacking the deceased viz., wooden log was available in the place of occurrence whereas it was shown by way of recovery. In such view of the matter, there are arguable points in the appeal to be decided. Thus, the sentence will have to be suspended particularly when the petitioner was merely 18 years old at the time of the commission of the offence.

3.The learned Additional Public Prosecutor appearing for the State would submit that there are eye witnesses available, they could not depose in view of the threat exerted by the petitioner. The contradiction between the evidence of P.Ws 1,2 and 7 as against P.W.5 with respect to recovery is only minor in nature. The trial Court considered the relevant materials and thereafter rendered the conviction. Therefore, this petition will have to be dismissed.

4. Admittedly, the petitioner was 18 years old at the time of the occurrence. The deceased was none other than the brother-in-law of the petitioner. We do find some contradiction in the evidence of P.Ws. 1,2 and 7 as against P.W.5 with respect to recovery. The case was registered only under Section 174 Cr.P.C., and thereafter altered. Thus, we do find arguable issues involved to be adjudicated in the appeal.

5.Considering the above, we are inclined to suspend the sentence. 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 the Judicial Magistrate No.1, Nagapattinam and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

29/08/2019

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, NAGAPATTINAM.

2 THE CHIEF JUDICIAL MAGISTRATE
NAGAPATTINAM [FOR INFORMATION]

3 THE SESSIONS COURT,
NAGAPATTINAM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
VELANKANNI POLICE STATION,
NAGAPATTINAM DISTRICT.

+1C.C. to M/S.SWAMINATHAN A. Advocate on payment of necessary
charges SR NO.18151

Order

in
CRL MP.9500/2019

in
CRL A.439/2019

Date :29/08/2019

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MK:29/08/2019

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