

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fifth 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.9518 of 2019

IN CRL.A.NO.755 OF 2019

D.JAYAKUMAR

[PETITIONER]

Vs

STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
TIRUPATTUR TALUK POLICE STATION,
TIRUPATTUR, VELLORE DISTRICT.
(CR.NO.676 OF 2016)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.755/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of conviction and imprisonment dated 22.10.2018 imposed by the file of the learned III Additional District and Sessions Judge, Tirupattur, Vellore in SC No.141 /2017 and enlarge the petitionr on bail pending disposal of the Crl.A.No.755/2018 and pass any other or further order.[CRL.MP.NO.9518/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.755/2019 on the file of the High Court and upon hearing the arguments of M/S.M.PALANIVEL, 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.M.SUNDRESH,J)

The petitioner has been arrayed as A1 in S.C. No. 141 of 2017 on the file of the III Additional District and Sessions Judge, Tirupattur, Vellore District. The trial Court 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 simple imprisonment for a period of three months. Seeking suspension of sentence, the present petition has been filed.

onwards. The case of the prosecution is that in view of the previous enmity, he attacked the deceased and committed the offence with the single stab.

3. The learned counsel appearing for the petitioner would submit that even as per the evidence of P.W.3, there was a wordy quarrel. P.W.3 further stated that the deceased was drunk. P.W.1 also stated that there used to be constant fight between the petitioner and the deceased. There was only a single stab. Therefore, even assuming the petitioner has committed the offence, it would not fall under Section 302 IPC. He has been in incarceration from the date of the judgment - 22.10.2018. It is further submitted by the learned counsel for the petitioner that A2 and A3 had already been acquitted. Thus, this petition will have to be allowed.

4. The learned Additional Public Prosecutor appearing for the State submitted that there are eye witnesses available in the case. This Court considered the materials available on record and dismissed the previous petition. Hence, the present petition also will have to be dismissed.

5. We find some force in the submission made by the learned counsel appearing for the petitioner. The petitioner has been in incarceration from 22.10.2018 onwards. Even as per the evidence of P.W.3, there was quarrel between the petitioner and the deceased was under the intoxication of liquor. P.W.1 has also stated that there used to be previous enmity. The case of the prosecution itself is that the petitioner suspected the fidelity of his wife with the deceased, who has not been examined. The post-mortem certificate also would show that there was only single stab. Thus, we find that there are arguable points available in the appeal.

6. Though this is the second petition, in the light of the discussion made above and considering the fact that there are valuable points available in the appeal, 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, Tirupattur 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/-

05/08/2019

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.II, TIRUPATTU

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE[FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON,VELLORE

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
TIRUPATTUR TALUK POLICE STATION,
TIRUPATTUR,
VELLORE DISTRICT.

6 THE III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, TIRUPATTUR
VELLORE DISTRICT

+1 C.C. to M/S.M.PALANIVEL Advocate on payment of necessary
charges SR.NO. 16247

Order

in
CRL MP.9518/2019

सत्यमेव जयते IN CRL.A.NO.755 OF 2019

Date :05/08/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 05/08/2019

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