

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Second 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.10423 of 2019

IN CRL.A.NO.689 of 2018

ANNAMALAI @ PRAKASH

[PETITIONER/APPELLANT]

Vs

STATE BY

[RESPONDENT]

THE STATION HOUSE OFFICER,
ARIYANKUPPAM POLICE STATION,
PUDUCHERRY.
CR.NO.2 OF 2010.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed upon the Petitioner/Appellant by the III Additional Sessions Judge, Puducherry in S.C.NO.56 of 2010 by judgement dated 11.07.2018 enlarged on bail pending disposal of the Appeal No.689 of 2018.

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.G.MOHANAKRISHNAN, Advocate for M/S.K.G.SENTHIL KUMAR, Advocate for the petitioner, and of MR. V.BALAMURUGANE, Additional Public Prosecutor for Puducherry, on behalf of the Respondent, the court made the following order:-

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

The petitioner is A1 in S.C.No.56 of 2010 on the file of the learned III Additional Sessions Judge, Puducherry. There were 4 other accused in the case. After full-fledged trial, by judgement dated 11.07.2018, the learned Additional Sessions Judge has convicted the petitioner/appellant alone for offence under Sections 324 (Two counts) and 302 of IPC and sentenced him to undergo simple

imprisonment for six months for each count for offence under Section 324 of IPC (Two counts) and imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for a further period of one year for offence under Section 302 of IPC. The sentence were ordered to run concurrently. Challenging the conviction and sentence the petitioner preferred an appeal in CrI.A.No.689 of 2018. Seeking suspension of sentence, the petitioner/appellant is before this court with this miscellaneous petition.

2. The case of the prosecution is that the disputed property was owned by the deceased. The deceased let out the same in favour of one Amirdharaj. The said Amirdharaj sold the same in favour of the petitioner's mother. After coming to know of the same, the deceased gave a complaint against the petitioner's mother and Amirdharaj. Both were taken into judicial custody pursuant to the case registered against them. Enraged over the same, the petitioner went to the disputed property and attacked the deceased and committed the offence.

3. The learned counsel for the petitioner would submit that the presence of P.W.1 and P.W.2 is very doubtful. The occurrence had taken place in the disputed place as per the case of the prosecution. P.W.1 and P.W.2 are living in some other place. P.W.2 though injured has suffered only minor injuries. A2 to A5 were acquitted on the same footing. The petitioner has been under incarceration for more than one year. Thus, according to the learned counsel, there are arguable points in the appeal for acquittal and, therefore, the suspension of sentence petition will have to be allowed.

4. Per Contra, the learned Additional Public Prosecutor based on the counter affidavit submitted that the case against the petitioner stands on a different footing including the overt acts. The motive has been clearly established. P.W.1 and P.W.2 are the eye witnesses of which P.W.2 is the injured witness. Therefore, the petition for suspension of sentence will have to be dismissed.

5. We do find issues of fact and law involved to be decided in the appeal. A2 to A5 have been acquitted by the trial court while disbelieving the case of the prosecution. The petitioner is under incarceration for more than one year.

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 III Additional Sessions Judge,

<https://hcservices.ecourts.gov.in/hcservices/>

Puducherry, and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-
22/08/2019

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 III ADDITIONAL SESSIONS
JUDGE, PUDUCHERRY.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY.

3 THE STATION HOUSE OFFICER,
ARIYANKUPPAM POLICE STATION,
PUDUCHERRY.

4 THE PUBLIC PROSECUTOR
PUDUCHERRY.

+1 C.C. to M/S.K.G.SENTHIL KUMAR Advocate on payment of
necessary charges SR.NO.17502

Order

in
CRL MP.10423/2019

in
CRL.A.NO.689/2018

Date :22/08/2019

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TA-26/08/2019