

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Eighth 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.10061 of 2019

IN CRL.A.NO.40 of 2019

N.PRASATH

[PETITIONER/APPELLANT/ACCUSED]

Vs

STATE REPRESENTED BY [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
E-1, SINGANAILLUR POLICE STATION,
COIMBATORE DISTRICT.

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 passed against the Petitioner/Appellant by the Learned III Additional District and Sessions Judge, Coimbatore in his Judgment dated 31.07.2018 passed in S.C.206 of 2016, pending enlarged on bail pending disposal of the above Crl.A.40/2019

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.ARUL ANBU MANI, Advocate for M/S.ARULSELVAM ASSOCIATES, 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. 206 of 2016 on the file of the III Additional District and Sessions Judge, Coimbatore for the major offence punishable under Section 302 IPC. 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.5,000/- in default, to undergo simple

imprisonment for a period of six months. Seeking suspension of sentence, the present petition has been filed.

2. The learned counsel appearing for the petitioner would submit that along with the petitioner, one another person has been arrayed as A2. The case of the prosecution is that pursuant to the illicit relationship between A2 and the petitioner, the petitioner took the deceased and committed the offence. However, A2 has already been acquitted. Insofar as the petitioner is concerned, the evidence of P.W.1 and P.W.2 would show that even prior to the extra judicial confession made followed by recovery, the petitioner was in custody. Though the material object (knife) recovered would show that the blood found therein belongs to A Group of the deceased, no D.N.A tests has been done. The evidence of P.W.12 has been disbelieved insofar as last seen theory is concerned. The evidence of P.W.7 will have to be seen along with P.W.1 and P.W.2. Therefore, the sentence will have to be suspended, particularly when the petitioner has been under incarceration for more than one year.

3. The learned Additional Public Prosecutor appearing for the State submitted that the last seen theory has been established through the evidence of P.W.7. This coupled with the recovery would clearly show that the petitioner has committed the offence. As these aspects have been considered by the trial Court, the present petition also will have to be dismissed.

4. We are dealing with a case of circumstantial evidence. The last seen theory itself cannot be a sole ground to convict the petitioner. We have also perused the evidence of P.W.1 and P.W.2 who have deposed that the deceased was in the police custody two days prior to the extra judicial confession given by P.W.6. Thus we find considerable points available to be argued in the appeal.

5. Taking note of the above coupled with the period of incarceration, 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 Judicial Magistrate No.3, Coimbatore 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/-

08/08/2019

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

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Sub-Assistant Registrar (Statistics/C.S.)

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High Court, Madras - 600 104.

TO

1 THE III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, COIMBATORE.

2 THE JUDICIAL MAGISTRATE
NO.3, COIMBATORE

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
E-1, SINGANALLUR POLICE STATION,
COIMBATORE DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1 C.C. to M/S.ARULSELVAM ASSOCIATES Advocate on payment of
necessary charges SR.NO.16619

Order

in
CRL MP.10061/2019
in
CRL.A.NO.40/2019

Date :08/08/2019

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