

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Ninth day of July 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.10261 of 2019

IN CRL.A OF 705 OF 2017

SIVA @ SIVA KUMAR

[PETITIONER]

Vs

STATE REP. BY

[RESPONDENT]

INSPECTOR OF POLICE,
METTUPALAYAM POLICE STATION,
COIMBATORE DISTRICT,
(CRIME NO.573/2012).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.705 of 2017 on the file of the High Court, the High Court will be pleased to enlarge the petitioner on bail by suspending the sentence imposed in S.C.No.08/2014 dated 20.11.2015 on the file of Special Court For Bomb Blast Cases, Coimbatore pending disposal of C.A.No.705/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.705 of 2017 on the file of the High Court and upon hearing the arguments of M/S. MURUGANANTHAM T., Advocate for the petitioner and of MR.R.PRATHAP KUMAR, Government Advocate (Crl.side) 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 for the major offence punishable under Section 302 and 506(ii) IPC in S.C. No. 08 of 2014 on the file of the Special Court for Bomb Blast Cases, Coimbatore. The trial Court, by judgment, dated 20.11.2015 convicted the petitioner for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment; for the offence punishable under Section 506(ii) IPC, sentenced to undergo three years rigorous imprisonment and the sentences are ordered to run concurrently. Seeking suspension of sentence, the present petition has been filed.

2. The occurrence was on 06.08.2012 at 5.00 p.m. The motive as per the case of the prosecution is that the deceased attacked the father of the petitioner on the previous day. The overt act is that the petitioner along with the other accused came in two-wheeler and took the bottle available in the nearby shop and attacked the deceased.

3. The learned counsel appearing for the petitioner would submit that A2 has already been acquitted. At best, the case would come under Section 304(I) or 304 (II) IPC, as the case may be. The petitioner has been under incarceration for more than 3 1/2 years as the date of judgment was on 20.11.2015. There are arguable points involved in the appeal. Thus, this petition will have to be allowed.

4. The learned Additional Public Prosecutor appearing for the State would submit that there are eye witness viz., P.W.1 to P.W.4. The trial Court considered the evidence of eye witnesses along with the motive and accordingly convicted the petitioner. A2 stands on a different footing than the petitioner and therefore, the petition will have to be dismissed.

5. The fact remains that the petitioner has been under incarceration for a period more than 3 1/2 years. We do find that there are arguable points in the appeal. Even as per the prosecution, the petitioner attacked the deceased from taking the bottle available in the nearby shop. Therefore, the question to be considered is as to whether the case would fall under Section 302 IPC on the one hand or 304 (I) or 304 (II) IPC on the other hand, even assuming the case projected is accepted.

6. Considering the above coupled with 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 District Munsif Cum Judicial Magistrate, Mettupalayam 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.

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29/07/2019

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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, METTUPALAYAM.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE. (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
METTUPALAYAM POLICE STATION,
COIMBATORE DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

6 THE SPECIAL COURT FOR BOMB
BLAST CASES, COIMBATORE.

C.C. to M/S. MURUGANANTHAM T. Advocate on payment of necessary
charges Sr.15689

Order

in
CRL MP.10261/2019

IN CRL.A OF 705 OF 2017

Date :29/07/2019

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copies of the BAIL/Anti.BAIL Orders in this format

RVR 30/07/2019

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