

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Seventeenth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.11957 of 2019

IN CRL.A.NO.543 OF 2019

ELAMARAN

[PETITIONER]

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
LAW AND ORDER,
V-5, THIRUMANGALAM POLICE STATION,
CHENNAI-101,
(CRIME NO.97 OF 2008).

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.543/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on 25.07.2019 in S.C.No.5 of 2011, on the file of II Additional Session Court, Chennai, enlarge him on bail, pending Crl. Appeal.[CRL.MP.NO.11957/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.543/2019 on the file of the High Court and upon hearing the arguments of MR.A.SUNDARAVADANAN FOR M/S. S.PRASADH Advocate for the petitioner and of MRS.M.PRABHAVATHI ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by **R.SUBBIAH, J**]

Petitioner/A8 along with nine others faced trial in S.C.No.5 of 2011 on the file learned II Additional Sessions Judge, Chennai. Trial Court, under judgment dated 25.07.2019, convicted the petitioner and sentenced him as follows:

Offence	Sentence
147 IPC	6 months R.I. and fine of Rs.1,000/- i/d 3 months S.I.
341 r/w 149 IPC	1 month S.I.
302 r/w 149 IPC	Life imprisonment and fine of Rs.2,000/- i/d 3 months S.I.

Hence, petitioner seeks suspension of sentence.

2. The case of the prosecution is that the deceased developed intimacy with the wives of A1 and A4. Angered thereby, at the instance of A1, A2 and A4, the accused committed the offence.

3. Learned counsel for petitioners submits that in the complaint, only the names of A1 to A5 and A9 were mentioned and the name of the petitioner/A8 was not mentioned. The charge against petitioner/A8 is that he has wrongfully restrained the deceased escaping from the scene of occurrence, whereas, contrary to the same, the trial Court has arrived at a finding that the petitioner/A8 repeatedly inflicted injuries on the deceased. While it was the evidence of PW-1 that he did not know whether all the accused committed the offence or not, the finding of conviction against petitioner/A8 is not sustainable since the same has been arrived at solely based on the evidence of PW-1. Moreover, PW-27, Doctor, who treated the deceased, deposed that he was informed by the deceased that he was attacked only by one unknown person.

4. Learned counsel for petitioner further submits that the petitioner is presently confined at Central Prison, Puzhal, Chennai and he is in prison for the past four and a half months. There are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. Submitting as above, learned counsel prays this Court to suspend the sentence passed against the petitioner/A8.

5. Learned Additional Public Prosecutor vehemently opposes to grant suspension of sentence to the petitioner.

6. Considering the facts and circumstances of the case and in view of the fact that the petitioner has been in custody for four months, that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioner and further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in a sum of

Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned II Additional Sessions Judge, Chennai and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

17/12/2019

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 II ADDITIONAL SESSIONS JUDGE
CHENNAI

2 THE METROPOLITAN MAGISTRATE, NO.X,
EGMORE, CHENNAI

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
LAW AND ORDER,
V-5, THIRUMANGALAM POLICE STATION,
CHENNAI-101,

C.C. to M/S. S.PRASADH Advocate on payment of necessary charges
SR.NO.

Order

in
CRL MP.11957/2019

IN CRL.A.NO.543 OF 2019

Date :17/12/2019

From 7.2.2001 the Registry is issuing certified
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RD 18/12/2019