

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.12665 of 2019

IN CRL.A.NO.221 OF 2019

ASHEN BABU

[PETITIONER]

Vs

STATE REPRESENTED BY [RESPONDENT]
INSPECTOR OF POLICE,
B7 KAVERIPATTINAM POLICE STATION,
KRISHNAGIRI DT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.221/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.244 of 2016 on the file of Sessions Judge, Fast Track Court, Krishnagiri dated 05.04.2019 and by enlarging the petitioner on bail till the disposal of pending Appeal Crl.A.No.221 of 2019, [CRL.MP.NO.12665/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.221/2019 on the file of the High Court and upon hearing the arguments of M/S. P.EZHIL NILAVAN Advocate for the petitioner and of MR.K.PRABAKAR ADDL. 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 is the sole Accused in **S.C.No. 244 of 2016** on the file of the **Sessions Judge, Fast Track Mahila Court, Krishnagiri**. The trial Court, by judgment dated 05.04.2019, convicted the Petitioner for the offence punishable under Section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/, in default, to undergo two years Rigorous Imprisonment. **Seeking suspension of sentence imposed**, the present Petition has been filed.

2. The case of the prosecution is that, the deceased is the second wife of the Petitioner. The Petitioner and the deceased were living together even during the lifetime of the Petitioner's first wife. Pursuant to a wordy quarrel which arose with respect to demand of money by the deceased, the Petitioner poured kerosene on the

deceased and set her on fire.

3. Learned counsel for the petitioner submitted that, there are two Dying Declarations made, one before the Magistrate and the other before the Police.

4. In the Dying Declaration made before the Magistrate, the deceased has deposed that the Petitioner and his brother will have to return the jewels and the money received from her. While refusing to return, both of them set the deceased on fire. However, in the Dying Declaration made before the Police, the deceased has stated that there is a dispute with respect to payment of rent, which led to the quarrel and thereafter, the Petitioner alone had set her on fire.

5. Learned counsel for the Petitioner further submitted that even P.W.1 has stated that, he along with the Petitioner took the deceased to Hospital. Accident Register copy which is marked as an exhibit, also substantiates the same. Thus, the aforesaid factors will have to be considered.

6. Learned Additional Public Prosecutor appearing for the State submitted that, the evidence of P.W.1 coupled with the evidence of the Doctor, have been taken into account by the trial Court, while rendering conviction. Thus, this Petition will have to be dismissed.

7. The petitioner has been under incarceration from 05.04.2019. We do find arguable points available in the appeal. Admittedly, there are two Dying Declarations, which are *prima facie* contradictory to each other. If the Dying Declaration of the deceased before the Magistrate is taken as true, then the Petitioner's brother, who is also arrayed as Accused, has to be convicted. The conduct of the Petitioner, subsequent to the occurrence will have to be closely monitored by the Investigating Officer.

8. Considering the above, 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 the Sessions Judge, Fast Track Mahila Court, Krishnagiri** and on further condition that the Petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m., pending Appeal.

-sd/-

25/11/2019

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.)
High Court, Madras - 600 104.

TO

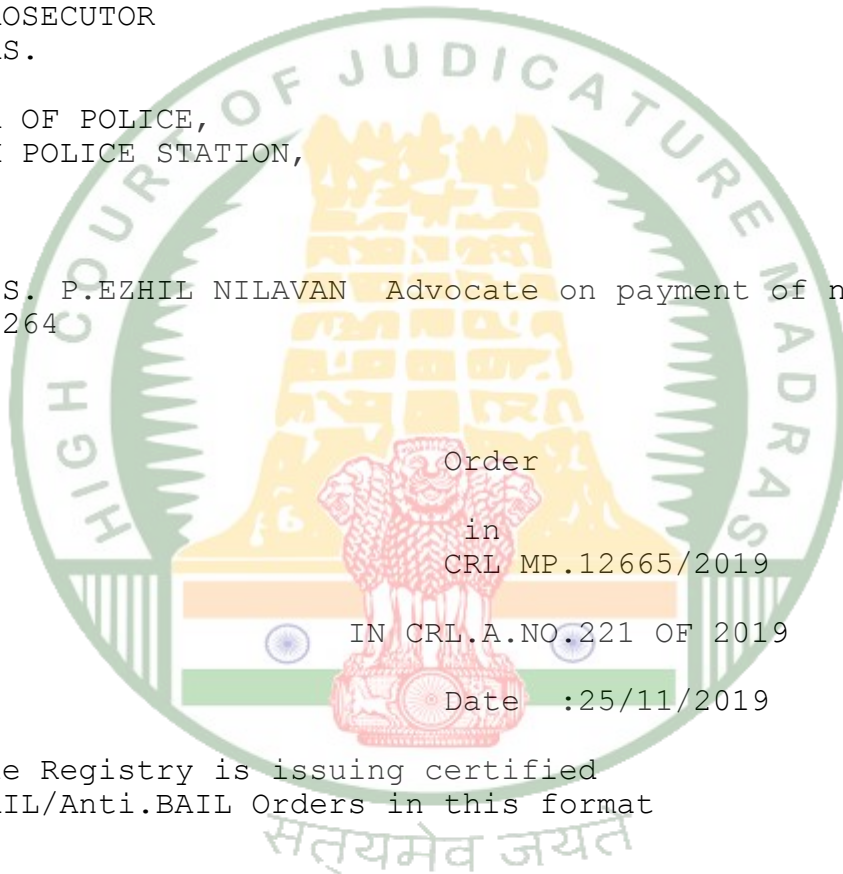
1 THE SESSIONS JUDGE
FAST TRACK MAHILA COURT,
KRISHNAGIRI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PERIYAR NAGAR,
RAMSET NAGAR,
THORAPADI, VELLORE ,TN-632002.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
B7 KAVERIPATTINAM POLICE STATION,
KRISHNAGIRI DT.

+1 C.C. to M/S. P.EZHIL NILAVAN Advocate on payment of necessary
charges SR.NO. 24264



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RD 25/11/2019

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