IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.14415 of 2019

IN CRL.A.NO.680 OF 2019

SAKTHIVEL [PETITIONER]

Vs

THE STATE REP.BY ITS [RESPONDENT]
THE INSPECTOR OF POLICE,
MAYILADUDHURAI POLICE STATION,
NAGAPPATTINAM DISTRICT.
CR.NO.941 OF 2012.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.680/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner/appellant herein by the learned Sessions Judge, Nagappattinam in SC.No.101 of 2013 dated 12.07.2019 and enlarge the petitioner on bail pending disposal of the above criminal appeal.[CRL.MP.NO.14415/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.680/2019 on the file of the High Court and upon hearing the arguments of M/S.GREETHA SENTHILKUMAR Advocate for the petitioner and of MR.M.MOHAMED RIYAZ,ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition has been filed by the Petitioner/A1, seeking suspension of sentence of imprisonment, imposed by the judgment, dated, 12.07.2019, made in S.C.No.101 of 2013, by the Sessions Court, Nagapattinam and bail to the petitioner/A1 in pursuance to the the Crime No. 941 of 2012 on the file of the Inspector of Police, Mayiladuthurai Police Station, pending disposal of the Criminal Appeal.

2 This court heard the learned counsel on either side and also perused the materials placed on record.

3 In and by the impugned judgement, the Petitioner/A1 was convicted and sentenced for the offence under Section 304(2) of IPC to undergo seven year Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months Rigorous Imprisonment.

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4 The learned counsel for the petitioner would submit that even as per the prosecution, PW/2 /Mohameed Thasleem was stated to have invited his friends for a Ramzan party at Koorainadu bus stand, Mayildaduthurai and PW1 and PW3 had before attending the party, had gone to the Tasmac bar for consuming liquor and while they were consuming liquor, a quarrel ensued between them and the accused and that it continued till the entrance of the bar and at that time when the deceased Murugan who was near the entrance, had attempted to pacify the quarrel and at that time the petitioner along with other accused were stated to have abused the deceased Murugan with filthy language and fisted him with their hands on the chest and backside of the chest due to which he had fallen down and when he had fallen down, the accused have stamped him on his stomach and private parts. The learned counsel would submit that as per the autopsy, the deceased is stated to have died due to the injuries sustained on the back side of his head. None of the witnesses have spoken about the accused having caused any injury on the head. The presence of PW1 itself is doubtful. As per PW1, the deceased had not consumed liquor, whereas, the post-mortem report reveals that the deceased was in drunk. He would further submit that right from the date of conviction on 12.07.2019, the petitioner is in custody.

5 The learned counsel appearing for the petitioner would submit that there are arguable points available in the Criminal Appeal, which is not likely to be taken for final hearing in the near future and the Petitioner/A1 has got a fair chance of succeeding in the Criminal Appeal and hence, the substantive sentence imposed against the Petitioner/A1 may be suspended. He would also submit that the co-accused in this case has been granted suspension of sentence and Bail in by order dated 08.11.2019 in Crl.M.P.No. 10211 of 2019 in C.A.No. 466 of 2019.

6 The learned Additional Public Prosecutor would submit that the prosecution by letting in cogent evidence, has proved the case that the petitioner and the other accused have caused the death of the deceased and the Trial Court has rightly convicted them.

7 Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the substantive sentence of imprisonment alone is suspended and the Petitioner/ A1 is ordered to be enlarged on bail, on the following conditions:-

i. The Petitioner/ A1 shall execute a bond for a sum of Rs.25,000/- (Rupees Ten Thousand only), with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Mayiladuthurai.

ii. The Petitioner/A1 shall report before the Trial Court, on the first working day of every English Calendar month at 10.30 a.m., until further orders.

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Tag this appeal with C.A.No. 466/2019.

-sd/-
27/11/2019

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 SESSIONS COURT
NAGAPATTINAM

2 THE JUDICIAL MAGISTRATE,
NO.I, MAYILADUTHURAI

3 THE CHIEF JUDICIAL MAGISTRATE
NAGAPATTINAM[FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON,TRICHY

6 THE INSPECTOR OF POLICE,
MAYILADUDHURAI POLICE STATION,
NAGAPPATTINAM DISTRICT.

+1 C.C. to M/S.GREETHA SENTHILKUMAR Advocate on payment of necessary charges SR.NO. 24479

Order

in
CRL MP.14415/2019

IN CRL.A.NO.680 OF 2019

Date :27/11/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
RD 03/12/2019

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