

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Thirteenth 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.14723 of 2019

IN CRL.A.NO.703 OF 2019

LAKSHMANAN

[PETITIONER]

Vs

THE STATE BY

[RESPONDENT]

DEPUTY SUPERINTENDENT OF POLICE,
NAMAKKAL SUB DIVISION,
NAMAKKAL DISTRICT,
(CRIME NO.161 OF 2016
ON THE FILE OF NALLIPALAYAM
POLICE STATION).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.703/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the Judgment dated 26.03.2019 passed in SC.No.49/2017 on the file of Principal Sessions Judge, Namakkal and enlarge the petitioner on Bail pending disposal of the above Criminal Appeal.[CRL.MP.NO.14723/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No. 703/2019 on the file of the High Court and upon hearing the arguments of M/S. R.NALLIYAPPAN, 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 has been arrayed as first accused along with two other persons in S.C.No. 49 of 2017 on the file of the Principal Sessions Judge, Namakkal. The trial Court, by judgment dated 26.03.2019 convicted the petitioner for the offence punishable under

Section 302 IPC and 3(2)(v) of SC/ST (POA) Act and for the offence punishable under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment and for the offence under Section 3(2)(v) of SC/ST (POA) Act, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment and ordered the sentences to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the deceased was having illicit relationship with the wife of the petitioner. Enraged over the same, all the accused joined together and committed the offence. A3 took the deceased to the place of occurrence. Thereafter, all the accused joined together and attacked him and committed the offence.

3. The learned counsel appearing for the petitioner submits that A2 and A3 have been acquitted. Therefore, the Trial Court ought to have adopted the very same reasoning. The motive has not been established by the prosecution. There is no material to hold that the wife of the petitioner was having illicit relationship with the deceased. The recovery has not been proved in the manner known to law. Even otherwise, the mere recovery pursuant to the statement made by itself cannot be a ground as it will form part of the one of the links to the chain of circumstances. Therefore, the suspension of sentence will have to be granted to the petitioner by taking into consideration the period of incarceration as he is under the judicial custody from 26.03.2019 onwards.

4. The learned Additional Public Prosecutor appearing for the State submitted that the petitioner stands on a different footing. Recovery has been made only pursuant to the statement made by him. The trial Court, took into consideration the relevant materials while rendering conviction. Thus, this petition will have to be dismissed.

5. It is the specific case of the prosecution that all the accused joined together and committed the offence. It is the further case of the prosecution that A3 took the deceased to the place in which all the accused were available and thereafter they attacked him. Therefore, *prima facie*, we are of the view that what has been applied by the trial Court to the case against A2 and A3, will have to be applied to the case of the petitioner. The petitioner is also undergoing incarceration from 26.03.2019 onwards. Thus, we hold that there are sufficient points available in the appeal to be agitated.

6. Considering the above coupled with the period of incarceration of the petitioner, 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 Judicial Magistrate, No.I, Namakkal 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/-
13/11/2019

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 PRINCIPAL SESSIONS JUDGE
NAMAKKAL

2 THE JUDICIAL MAGISTRATE,
NO.I, NAAMAKKAL

3 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL[FOR INFORMATION]

4 THE SUPERINTENDENT
CENTRAL PRISON, COIMBATORE

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS

6 THE DEPUTY SUPERINTENDENT OF POLICE,
NAMAKKAL SUB DIVISION,
NAMAKKAL DISTRICT,
(CRIME NO.161 OF 2016 ON THE FILE OF NALLIPALAYAM
POLICE STATION).

+1 C.C. to M/S. R.NALLIYAPPAN Advocate on payment of necessary
charges SR.NO. 23313

WEB COPY

Order

in
CRL MP.14723/2019

IN CRL.A.NO.703 OF 2019
Date :13/11/2019

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

RD 13/11/2019
<https://hcservices.ecourts.gov.in/hcservices/>