

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Eighth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.13643 of 2017

IN CRL.A.NO.697 of 2017

MUTHAN @ MUTHUSAMY,

[ACCUSED/APPELLANT]

Vs

STATE OF TAMIL NADU REP.BY
THE INSPECTOR OF POLICE,
KAINATHU KADAVU POLICE STATION,
COIMBATORE DISTRICT.
CR.NO.357 OF 2009

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence of fine imposed upon the appellant herein by the Learned First Additional District and Sessions Judge, Coimbatore in S.C.No.65 of 2010 dated 25.06.2010 and release the petitioner herein on bail pending disposal of the above Crl.A.No.697 of 2017.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.PHILIP RAVINDRAN JESUDOSS, Advocate for the petitioner and of MR.R.PRATHAP KUMAR (ADDITIONAL PUBLIC PROSECUTOR) on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner / appellant is the sole accused in SC.No.65/2010 on the file of the learned I Additional District and Sessions Judge, Coimbatore, and vide judgment dated 25.06.2010, he was convicted for the offences u/s.302 and 309 IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- with a default sentence of 3 years simple imprisonment for the commission of the offence u/s.302 IPC and sentenced to undergo 1 year rigorous

imprisonment and to pay a fine of Rs.100/- with a default sentence of 2 months simple imprisonment for the commission of the offence u/s.309 IPC. The sentences were ordered to run concurrently and set off was also granted u/s.428 Cr.P.C. Challenging the conviction and sentence, the the petitioner/appellant preferred the present appeal and pending disposal of the appeal, came forward to file the present miscellaneous petition seeking suspension of substantive sentences of imprisonment.

2 The learned counsel for the petitioner/appellant would submit that though P.Ws.1 and 2 said to have been the eyewitnesses to the occurrence, there are material contradictions between the testimonies of the said witnesses and that apart, admittedly, the petitioner/appellant himself has sustained grievous injuries and the same has not been explained by the prosecution. It is the further submission of the learned counsel for the petitioner/appellant the date of occurrence was on 03.08.2009 and the conviction and sentence was passed on 25.06.2010 and the appeal came to be filed belatedly in the year 2017 through Legal Aid and therefore, made an alternate plea to have the early hearing and disposal of the criminal appeal.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the testimonies of the eyewitnesses corroborate with each other on all material particulars and as regards the injuries sustained by the petitioner/appellant, P.W.1 has given an explanation and the scientific and other evidences had supported the case of the prosecution and would contend that it is not a fit case wherein this Court can grant the relief of suspension of substantive sentences of imprisonment and prays for dismissal of this petition.

4 The Court has carefully considered the rival submission and also perused the materials placed before it.

5 A perusal of the testimonies of the eyewitnesses and the impugned judgment would *prima facie* disclose that the motive aspect has been spoken to by the sons and daughter of the deceased, viz., P.Ws.4 to 6 and that apart, the eyewitnesses to the occurrence were P.W.1-sister of the deceased and P.W.2-husband of P.W.1 and P.W.1 had specifically stated that after committing the offence, the petitioner/appellant made an attempt to commit suicide by stabbing on his own. In the considered opinion of the Court, the points urged by the learned counsel for the petitioner/appellant, would revolve around adjudication of disputed questions of fact and that can be appreciated only at the time of final disposal of the appeal.

6 Therefore, this is not a fit case wherein in suspension of substantive sentences of imprisonment can be granted. In the result, the petition stands **dismissed**. However, taking into consideration of the fact that the impugned judgment came to be passed as early as on 25.06.2010 and the petitioner/appellant is in incarceration for nearly 8 years as a convict, this Court directs the Registry to prepare the typed set of documents/papers and list the criminal

appeal for final hearing on **23.04.2019**.

-sd/-
28/03/2019

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 FIRST ADDITIONAL
DISTRICT AND SESSIONS JUDGE, COIMBATORE.

2 THE INSPECTOR OF POLICE,
KAINATHU KADAVU POLICE STATION,
COIMBATORE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S.PHILIP RAVINDRAN JESUDOSS Advocate on payment of
necessary charges

Order

in
CRL MP.13643/2017

in
CRL.A.NO.697/2017

Date :28/03/2019

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

TA-08/04/2019