

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty First 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.16284 of 2019

IN CRL.A.NO.611 OF 2018

VELU

[PETITIONER / APPELLANT]

Vs

THE INSPECTOR OF POLICE
MELCHENGAM POLICE STATION,
TIRUVANNAMALAI DISTRICT.

[RESPONDENT / RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.611 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment passed against the Petitioner/Appellant in S.C.No.200/2007 on the file of District and Sessions Judge, Tiruvannamalai by Judgment dated 05.12.2017 and release the petitioner on bail pending disposal of the above, CRL.A.NO.611 OF 2018 [IN CRL.MP.NO.16284 OF 2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.611 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.V.PRAKASH BABU, Advocate for the petitioner and of 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 A1 in S.C.No. 200 of 2007 on the file of the District Sessions Judge, Thiruvannamalai. The trial Court, by judgment dated 05.12.2017 convicted the petitioner along with A2 for the offence punishable under Sections 120 (B), 302 IPC and Sections 3 and 25(1)(B) of the Indian Arms Act and for the offence punishable under Section 120 (B) IPC, sentenced to undergo life imprisonment, for the offence punishable under Sections 3 and 25(1)(B) of the Indian Arms Act, sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.2,000/, in default, to undergo two years rigorous imprisonment and for the offence punishable under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/,- 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 A2 was having an illicit relationship with the wife of the deceased. At the instance of A2, the petitioner committed the offence by murdering the deceased.

3. The learned counsel appearing for the petitioner submitted that pending trial and even thereafter, the petitioner has been under incarceration. A2 has already got her sentence suspended. There is no motive against the petitioner. The evidence of the prosecution with respect to the solitary eye witness cannot be believed. Therefore, the suspension of sentence will have to be granted to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State submitted that the overt act against the petitioner is distinct and different from that of A2. The trial Court, considered the materials available and rendered the conviction. Thus, this petition will have to be dismissed.

5. The petitioner has been under incarceration during trial, and till now. At least, on this ground alone, we are of the view that the petitioner is entitled for suspension of sentence as he has been under incarceration for quite number of years. The learned Additional Public Prosecutor submitted that the petitioner has been under incarceration from 05.12.2017 and not as stated by the learned counsel for the petitioner. However, we are of the view that inasmuch as A2 has already got her sentence suspended, the same benefit will have to be extended to the petitioner as well, more so, when the petitioner has been under incarceration for nearly two years. We also find that the ballistic report in respect of M.O.2 - Weapon was also not marked before the trial Court and further there is no certificate of the Collectorate with regard to the licence or non-possession of valid licence was marked. Thus, We do find arguable points available in the appeal.

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6. 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 District and Sessions Judge, Thiruvannamalai 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/-

21/11/2019

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 DISTRICT AND SESSIONS JUDGE,
TIRUVANNAMALAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
MELCHENGAM POLICE STATION,
TIRUVANNAMALAI DISTRICT.

+1C.C. to M/S.V.PRAKASH BABU Advocate on payment of
necessary charges SR NO.23995

Order

in

CRL MP.16284/2019

in

CRL.A.611/2018

Date :21/11/2019

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MK:22/11/2019

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