

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Wednesday, the Twentieth 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.13791 of 2018

IN CRL.A.NO.629 OF 2018

S.C.NO.304 OF 2015

[ON THE FILE OF THE SPECIAL SESSIONS JUDGE, COIMBATORE]

MUTHUPANDI

[ PETITIONER ]

Vs

THE INSPECTOR OF POLICE,  
B-6 PEELAMEDU POLICE STATION,  
COIMBATORE DISTRICT  
CR.NO.20 OF 2014.

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.629/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in S.C.No.304 of 2015 on 06.05.2016 by the Special Sessions Judge for Bomb Blast Case, Coimbatore and enlarge the petitioner appellant on bail till the disposal of the appeal

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.629/2018 on the file of the High Court and upon hearing the arguments of MR.GOPALA KRISHNA LAKSHMANA RAJU FOR M/S.R.RADHA PANDIAN Advocate for the petitioner and of MR. C.IYYAPPARAJ, ADDL. 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 is the sole accused in S.C.No.304 of 2015 on the file of the Court of Special Sessions Judge for Bomb Blast Case, Coimbatore and he stood charged and tried for the commission of offence under Section 302 IPC and the Trial Court, vide impugned judgment dated 06.05.2016, has convicted the petitioner / appellant for the commission of said offence and imposed him with a sentence of

rigorous imprisonment for life with a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment and the set off was also granted by the Trial Court under Section 428 CrPC.

2. The learned Senior counsel appearing for the petitioner / appellant has drawn attention of this Court to the testimonies of PWs. 1 and 2 as well as the impugned judgement and would submit that the PWs.1 and 2 would not have witnessed the occurrence at all and that apart, M.O.1- Hammer, said to have used by the petitioner / appellant for the commission of offence would not have been there in the scene of crime and even as per the admission of the alleged witnesses namely P.Ws.1 and 2, they, after consuming alcohol had slept and as such they would not have witnessed the occurrence. It is the further submission of the learned counsel for the petitioner/appellant that as per Ex.P1 compliant, murder was committed by using M.O.1-Hammer by the petitioner / appellant and whereas the Postmortem Report marked as Ex.P11 would indicate that there are ante-cumulative injuries also and as per Ex.P11 coupled with the testimony of PW6- Doctor who conducted autopsy, the death had happened on account of cumulative injuries and in the light of the said infirmities, which had shaken the very foundation laid down by the prosecution and the petitioner/appellant is having bright chance of succeeding in this appeal, prays for suspension of substantive sentence of imprisonment.

3. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that motive aspect has been spoken to by witnesses PWs. 1 and 2 supported by PW8 with whom PWs.1 and 2 as well as the deceased worked and also invited attention of this Court to the chief examination of PW8 and would submit that nothing useful has been elicited in favour of the petitioner / appellant and the testimonies of PWs. 1 and 2 also corroborate each other on all material particulars and it is also in consonance with Ex.P1-complaint and that apart, scientific evidence also establish the fact that the deceased had died on account of homicidal violence. It is also urged by the learned Additional Public Prosecutor that in pursuant to the admissible portion of the confession statement, marked as Ex.P14, incriminating articles were recovered and M.O1-Hammer was also subjected to forensic / chemical analysis and the said evidence also sustained the case of the prosecution and hence, prays for dismissal of the petition.

4. This Court has carefully considered the rival submission and also perused the material placed before it.

5. According to the prosecution, the deceased namely Vijayakumar happened to be related to PW1, who is employed under P.W.8 and they used to stay in one shed. The cellphone of the petitioner / appellant was found missing and he has suspected that the deceased would have taken it and on the date of occurrence on 09.08.2014, there was some altercation and the petitioner / appellant was pacified by PWs.1 and 2 and others and at about 3.00 am, again, the appellant / accused had wordy altercation and in that process, took M.O.1-hammer and hit him on his back head and as a consequence he died. A perusal of Ex.P-1

coupled with the testimonies of PWs.1 and 2 would *prima facie* disclose that the contents of the Ex.P1 complaint is corroborated by the testimonies of PWs.1 and 2 and also corroborate with each other on all material particulars. Except the suggestion that the PWs.1 and 2 had consumed alcohol along with the friends and slept off and they have not seen the occurrence, has been denied by both the witnesses. The testimony of PW.6-doctor who conducted autopsy coupled with Ex.P11- Postmortem Report would also evidence the fact that the deceased had died on account of homicidal violence and the scientific evidence has also supported the case of the prosecution.

6. In the considered opinion of this Court, the points urged by the learned Senior Counsel appearing for the petitioner / appellant revolves around adjudication of oral and documentary evidence and the same can be considered only at the time of final hearing of this appeal.

7. In the light of the reasons above, this Court is not inclined to suspend the substantial sentence of imprisonment imposed on the petitioner/appellant.

8. Therefore, the Criminal Miscellaneous Petition is dismissed.

-sd/-  
20/03/2019

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.

सत्यमेव जयते

TO

1 THE SPECIAL SESESSIONS JUDGE  
FOR BOMB BLAST CASES,  
COIMBATORE

2 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE,  
B-6 PEELAMEDU POLICE STATION,  
COIMBATORE DISTRICT

<https://hcservices.ecourts.gov.in/hcservices/>

WEB COPY

+1 C.C. to M/S.R.RADHA PANDIAN Advocate on payment of necessary charges SR.NO. 5722

Order

in  
CRL MP.13791/2018

IN CRL.A.NO.629 OF 2018

Date :20/03/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format  
RD 01/04/2019



WEB COPY