

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.14715 of 2018

IN CRL.A.NO.689/2018

ANNAMALAI @ PRAKASH

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
ARIYANKUPPAM POLICE STATION,
PUDUCHERRY.
CR.NO. 2 OF 2010.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.689/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence suspend the sentence imposed upon the Petitioner/Appellant by the III Addl.Sess.Juge, Puducherry in S.C.No. 56 of 2010 by judgement dt.11.7.2018 pending disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Appeal No.689/2018 on the file of the High Court and upon hearing the arguments of M/S.K.G.SENTHIL KUMAR Advocate for the petitioner and of Mr.D.BHARTHA CHEAKRAVARTHY PUBLIC PROSECUTOR, PONDICHERRY on behalf of the Respondent the court made the following order:-

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

There are five accused in SC.No.56/2010 on the file of the Court of II Additional Sessions Judge and III Additional Sessions Judge [In-charge], at Puducherry and the petitioner/appellant is arrayed as A-1. The Trial Court, vide impugned judgment dated 11.07.2018, had acquitted A-2 to A-5 and however, found A-1/petitioner/appellant herein guilty for the commission of the offences u/s.302 and 324 [2 counts] IPC and imposed him with the sentence of imprisonment for life and to pay a fine of Rs.10,000/- with a default sentence of rigorous imprisonment of one year for the commission of the offence u/s.302 IPC and also sentenced him to undergo simple imprisonment for six months for each count for the commission of the offence u/s.324

[2 counts] IPC and further ordered the sentences to run concurrently. Challenging the legality of said conviction and sentence, the petitioner/appellant preferred the above appeal and pending appeal, he has filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The learned counsel for the petitioner has drawn the attention of this Court to the impugned judgment as well as to the testimonies of the witnesses and would submit that the earliest information as to the alleged commission of the offence has been burked for the reason that the police has reached the scene even before the telephonic information was given by P.W.1 and in any event, it cannot be construed that P.Ws.1 and 2 had witnessed the alleged occurrence and would further urge that the defence evidence produced on behalf of the accused have not at all been properly appreciated and the recovery and witness to the inquest, had also turned hostile and most of the witnesses examined on behalf of the prosecution, are hearsay witnesses and the Trial Court had believed the uncorroborated testimonies of the interested witnesses, viz., P.Ws.1 and 2 and recorded conviction and passed the impugned judgment and since the chance of success is bright in the appeal, prays for suspension of substantive sentence of imprisonment.

3 Per contra, Mr.D.Bharatha Chakravarthy, learned Public Prosecutor [Puducherry] appearing for the respondent/State would submit that P.Ws.1 and 2 though closely related to the deceased, are also injured eyewitnesses and the prosecution through the testimonies of the other witnesses, had amply corroborated the testimonies of the eyewitnesses and it is also amply supported by the scientific evidence and since the Trial Court, had taken into consideration the oral and documentary evidences in proper perspective and rightly reached the conclusion of guilt and awarded maximum sentence, prays for dismissal of this petition.

4 This Court has considered the rival submissions and also perused the materials placed before it.

5 Though in the case of ocular testimony, the motive pale to insignificance, P.Ws.1 and 2 apart from speaking as to the motive for the commission of the offence, had also spoken to about the overt act on the part of the petitioner/appellant/A-1. It is to be noted at this juncture that both of them were attacked and they also sustained injuries and they are the injured witnesses. Though the learned counsel for the petitioner made an attempt to invite the attention of this Court to the testimonies of the witnesses to sustain his argument that there is a lingering doubt as to the testimonies of the said witnesses, in the considered opinion of the Court, the same cannot be appreciated at this juncture as the same can be considered and appreciated at the time of advancing the argument in the final disposal of the appeal. This Court, is of the *prima facie* of the view that the testimonies of the eyewitnesses have been corroborated by the scientific evidence. Therefore, this is not a fit case, wherein, the substantive sentence of imprisonment of the petitioner/appellant/A-1 can be suspended.

6 Hence, the miscellaneous petition stands dismissed.

-sd/-

25/02/2019

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 II ADDITIONAL SESSIONS
JUDGE AND III ADDITIONAL SESSIONS JUDGE [IN
CHARGE] AT PUDUCHERRY

2 THE CHIEF JUDICIAL MAGISTRATE
PUDUCHERRY [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY

4 THE INSPECTOR OF POLICE,
ARIYANKUPPAM POLICE STATION,
PUDUCHERRY. CR.NO. 2 OF 2010.

5 THE PUBLIC PROSECUTOR
PONDICHERRY

+1 C.C. to M/S.K.G.SENTHIL KUMAR Advocate on payment of
necessary charges SR.NO. 4196

Order

in
CRL MP.14715/2018

IN CRL.A.NO.689/2018

Date :25/02/2019

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