

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Second day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.15176 of 2018

IN CRL.A.No.714 of 2018

GANDHI @ GANDHIVEL

[PETITIONER/APELLANT]

Vs

STATE BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
SAIBABA COLONY POLICE STATION,
COIMBATORE DISTRICT.
CR.NO.239 OF 2016.

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 imprisonment imposed in the judgment dated 31.10.2017 made in S.C.No.144 of 2017 on the file of the Sessions Judge and Bomb Blast Court, Coimbatore and enlarge the petitioner on bail pending disposal of the above Crl.A.No.714 of 2018.

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.M.GURUPRASAD, 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 sole accused, vide impugned judgment dated 31.10.2017 made in S.C.No.144 of 2017, on the file of the Court of Sessions Judge and Bomb Blast Court, Coimbatore had convicted the appellant / accused for the commission of offence under Section 302 IPC and imposed him the sentence of life imprisonment and fine of Rs.1,000/- in default to undergo Simple Imprisonment for 3 months, and U/s.307 IPC, he was imposed with a sentence of Rigorous Imprisonment of 10 years and fine of Rs.1,000/- in default to undergo Simple Imprisonment for 3 months and the sentence were ordered to run concurrently and set off was

also granted under Section 428 Cr.P.C. and challenging the legality of the conviction and sentence imposed, had filed the present appeal and pending disposal of the same, has filed this petition for suspension of substantive sentence of imprisonment.

2. The learned counsel appearing for the petitioner would submit that the motive for the commission of offence is that P.W.1 and his friend Sankar were proceeding near Mettupalayam New Bus Stand about 12.00 hours on 21.05.2016 and the deceased Sankar demanded Cannabin from the appellant / accused and he replied in negative. P.W.1/injured witness asked the appellant/accused to give some Ganja which was kept in his pocket. In this process, there was wordy altercation and subsequently, at about 12.45 a.m, on the same day, the accused armed with knife / M.O.1 and uttered the word that he should be finished off and stabbed Sankar on the right side of the stomach. When P.W.1 attempted to stop, he also stabbed him on his chest and sustained injuries. It is the primordial submission of the learned counsel appearing for the petitioner that the testimonies of witnesses did not corroborate each other on material particulars. The case of the prosecution is that they proved the offence beyond any reasonable doubt, but still the case under Section 302 have not been made out for the reasons that the alleged demand of Ganga was made out at 12.00 am and alleged occurrence took place within 45 minutes at 12.45 a.m on 22.05.2016 and since, the petitioner/appellant is having bright chance of success in the Criminal Appeal, prays for suspension of substantive sentence of imprisonment.

3. *Per contra*, Mr.R.Prathapkumar, learned Additional Public Prosecutor appearing for the State would submit that the testimonies of witnesses corroborate with each other on all material particulars and the cause of death has also been amply supported by scientific evidence and other evidences and would further urge that the petitioner / appellant is also having antecedents in various heinous cases.

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

5. P.W.1 has also sustained injury during the commission of offence and his evidence and oral testimony appears to have been amply corroborated by the testimonies of P.W.s 2 and 3 and the scientific evidence has also supported the case of the prosecution that the deceased had died on account of homicidal violence. Though, the learned counsel for the petitioner/appellant made an alternative plea that in the effective consideration of the case, ingredients of Section 302 have not been made out, in the considered opinion of this Court, the points urged by him can be persuaded only at the time of advancing final arguments in this appeal.

6. In the considered opinion of this Court, it is not a fit case wherein the suspension of sentence is to be granted to the petitioners/appellants. In the light of the reasons above, this Court is not inclined to suspend the substantial sentence of imprisonment imposed on the petitioner/appellant.

7. Therefore, the Criminal Miscellaneous Petition is dismissed.

-sd/-
02/04/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE
AND BOMB BLAST COURT, COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL JAIL, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
SAIBABA COLONY POLICE STATION,
COIMBATORE DISTRICT.

+1 C.C. to M/S.M.GURUPRASAD Advocate on payment of necessary
charges SR.NO.6909

Order

in
CRL MP.15176/2018

in
CRL.A.NO.714/2018

Date :02/04/2019

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