

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty 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.15808 of 2018

IN CRL.A.NO.755/2018

D.JAYAKUMAR

[PETITIONER]

Vs

STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
TIRUPATTUR TALUK POLICE STATION,
TIRUPATTUR,
VELLORE DISTRICT.
CR.NO.676/2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.755/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of conviction and imprisonment dated 22.10.2018 imposed by the file of the learned III Additional District and Sessions Judge, Tirupattur, Vellore District in S.C.No.141/2017 and enlarge the petitioner on bail pending disposal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.755/2018 on the file of the High Court and upon hearing the arguments of M/S.M.PALANIVEL 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 is arrayed as A-1 out of 3 accused in SC.No.141/2017 on the file of the Court of II Additional District and Sessions Judge, Tirupathur, Vellore District. The brother of the petitioner/appellant/A-1 is arrayed as A-2 and the mother of the petitioner/appellant/A-1. All the three accused faced trial for the commission of the offences u/s.302, 294-B and 302 read with 34 IPC and the trial court, vide impugned judgment dated 22.10.2018, has

convicted the petitioner/appellant/A-1 for the commission of the offence u/s.302 IPC and imposed with the sentence of rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 6 months simple imprisonment. Set-off was also granted u/s.428 Cr.P.C. The Trial Court acquitted all the accused for the commission of the offence u/s.294-B IPC and also acquitted A02 and A-3 for the commission of the offence u/s.302 read with 34 IPC. Challenging the conviction and sentence, the petitioner/appellant/A-1 preferred the present appeal and pending disposal of the same, came forward to file the present miscellaneous petition seeking suspension of substantive sentence of his imprisonment.

2 The learned counsel for the petitioner/appellant/A-1 would submit that the motive for the commission of the offence projected by the prosecution is that there was a previous enmity between the families of A-3 and the defacto complainant/P.W.1 and Kanimozhi, the wife of A-1 / daughter-in-law of A-3 used to have conversation with P.W.1 and the same was not liked by A-1 to A-3. On 15.10.2016, evening hours, A-1 to A-3 picked up quarrel with the family members of P.W.1 on the ground that the daughter-in-law of A-3, viz, Kanimozhi, was chatting with P.W.1 and also abused them by using unparliamentary words. The husband of P.W.1 also scolded and there was a wordy altercation and in the course of same transaction, at about 19.30 hours on 15.10.2016, in front of the house of P.W.1, A-1 to A-3, in furtherance of common intention, had picked up quarrel with the husband of P.W.1, viz., Sakthi and at the instigation of A-3, A-1 stabbed Sakthi with a knife [M.O.1] on his left side of the abdomen and as a consequence, he died.

3 The learned counsel for the petitioner/appellant/A-1 would submit that the motive projected by the prosecution for the commission of the offence appears to be exaggerated and also artificial and though the prosecution has projected P.Ws.1, 3, 5, 6 and 7 as eyewitnesses to the occurrence, admittedly, all of them are closely related to the deceased Sakthi and in the absence of examination of any independent witness, coupled with the fact that the motive projected by the prosecution is also very flimsy and that admittedly, the deceased was a Carpenter and used to carry implements in connection with the work and on account of drunken stupor, he has fallen and one of the implements carried by him has caused fatal injury on his abdomen and as such, there is a chance of success in this appeal and hence, prays for suspension of the substantive sentence of imprisonment.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that the testimonies of the eyewitnesses corroborate with each other on all material particulars and the scientific evidence has also established the fact that the deceased - husband of P.W.1 died on account of homicidal violence and hence, prays for dismissal of the petition.

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

6 A perusal and consideration of the testimonies of the eyewitnesses, viz., P.Ws.1, 3, 5, 6 and 7 would *prima facie* disclose that it was the petitioner/appellant/A-1 by the use of M.O.1-Knife has caused the fatal injury. Though a suggestion was put to the said witnesses that the deceased was a carpenter and he used to carry his implements in connection with the job and on account of drunken stupor, he has fallen down and the said fatal injury was a self inflicted one, the said suggestion has been promptly denied by all the eyewitnesses, and the scientific evidence would also establish the fact that the deceased died on account of homicidal violence. Though the learned counsel for the petitioner/appellant/A-1 made an attempt to convince this Court that even assuming the case projected by the prosecution is cogent and trustworthy, still the petitioner/appellant/A-1 cannot be convicted for the commission of the offence u/s.302 IPC. In the considered opinion of the Court, the points urged by the learned counsel for the petitioner/appellant/A-1 in this miscellaneous petition, can be considered and appreciated only at the time of the hearing of the final arguments in this appeal and this Court is of the considered view that this is not a fit case wherein suspension of substantive sentences of imprisonment can be granted.

7 In the result, the miscellaneous petition is dismissed.

-sd/-
22/04/2019

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 II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TIRUPATHUR, VELLORE DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE DISTRICT

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
TIRUPATTUR TALUK POLICE STATION,
TIRUPATTUR,
VELLORE DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

C.C. to M/S.M.PALANIVEL Advocate on payment of necessary
charges

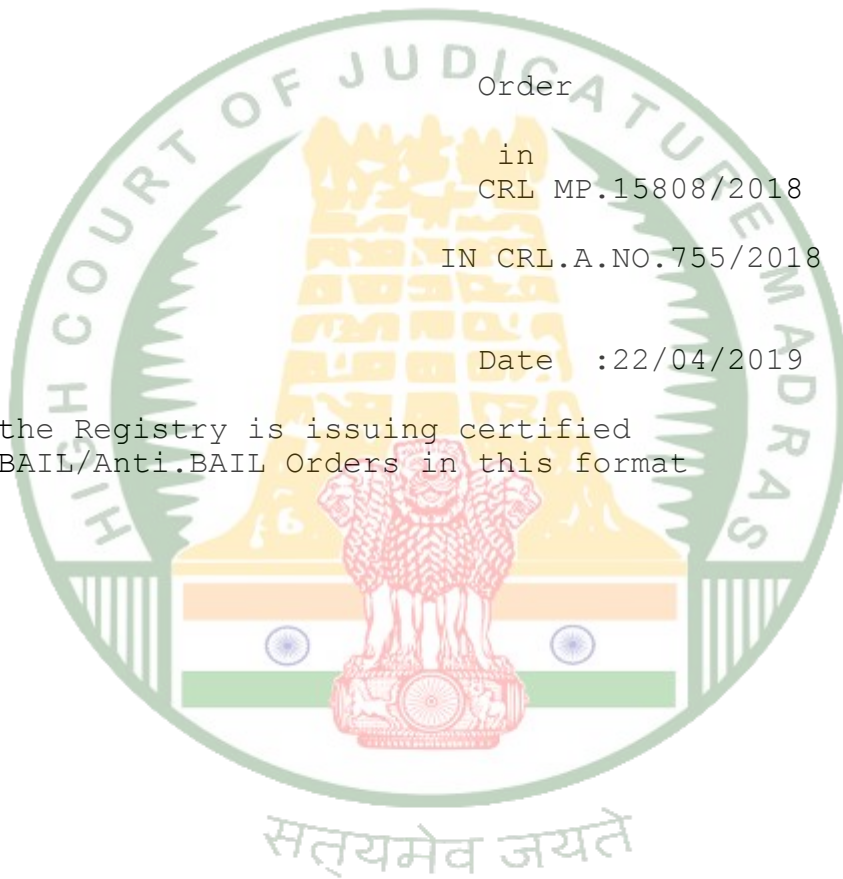
Order

in
CRL MP.15808/2018

IN CRL.A.NO.755/2018

Date :22/04/2019

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