

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fourth day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice C. T. SELVAM

and

The Hon`ble Mrs Justice S. RAMATHILAGAM

CRIMINAL MISCELLANEOUS PETITION No.16646 of 2018

in CRL.A.NO.804 OF 2018

1 MANIKANDAN
2 VENKATACHALAM
3 NAGARAJ

[PETITIONERS]

Vs

STATE BY
THE INSPECTOR OF POLICE CIRCLE,
VAZHAVANTHI NADU POLICE STATION,
NAMAKKAL DISTRICT.
CR.NO.40 OF 2011.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.804/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioner in S.C.No.41 of 2016 on the file of Learned Additional Sessions Judge, Namakkal dated 26.10.2018 and enlarge the petitioner on bail pending disposal of the said Crl.A.804 of 2018.[CRL.MP.NO.16646/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.804/2018 on the file of the High Court and upon hearing the arguments of MR.N.R.ELANGO SENIOR COUNSEL FOR M/S.S.SUJATHA Advocate for the petitioner and of MR.K.PRABAKAR ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by **C.T.SELVAM, J**)

Petitioners were convicted under judgment dated 26.10.2018 in SC.No.41/2016 by learned Additional Sessions Judge, Namakkal and sentenced as follows:-

Accused	Offence	Sentence
A1	302 r/w 34 IPC	Life Imprisonment and fine of Rs.10,000/- i/d one year R.I
	25(1-B) (a) r/w 3 of Arms Act	One year R.I and fine of Rs.1,000/- i/d 3 months R.I.
	506(ii) IPC	One Year R.I
A2	302 r/w 34 IPC	Life Imprisonment and fine of Rs.10,000/- i/d one year R.I
	25(1-B) (a) r/w 3 of Arms Act	One year R.I and fine of Rs.1,000/- i/d 3 months R.I.
	506(ii) r/w 34 IPC	One year R.I.
A3	302 r/w 34 IPC	Life Imprisonment and fine of Rs.10,000/- i/d one year R.I
	506(ii) IPC	One Year R.I

Hence, petitioners seek suspension of sentence.

2. We have heard Mr.N.R.Elango, learned Senior counsel appearing for petitioners as also learned Additional Public Prosecutor for respondent and perused the counter affidavit filed by the respondent.

3. The case of the prosecution is that owing to prior enmity, the accused awaited the arrival of the deceased at particular spot in Mangalampatti Village, Thinnanurnadu. On the arrival of the deceased, A1 and A2 caused two gun shot injuries using fire arms, A3 cut the deceased with Aruval and thereafter, A2 took position of Aruval and again caused injuries.

4. Learned Senior Counsel appearing for petitioners submitted that the FIR had been registered at the police station, which is situated 8 kms away from the scene, at 10.00 a.m on 12.04.2011 informing the occurrence at 7.00 a.m on 12.04.2011. However, the same had reached the learned Magistrate concerned only on the next day i.e., 13.04.2011 at 8.00.a.m. As against the FIR informing the involvement of 4 persons, the prosecution had put up only 3 accused to face trial. Though role of having caused cut injuries to the deceased had been attributed to the fourth person, there has been absolutely no investigation on such person's involvement. Stating thus, learned Senior counsel seeks grant of suspension of sentence. Learned Senior counsel for petitioners would submit that the petitioner is confined at Central Prison, Salem.

5. Heard learned Additional Public Prosecutor on the submissions made by learned Senior counsel for petitioner.

6. Considering the facts and circumstances of the case and in view of the fact that the petitioners have been in custody, that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioners, and further the appeal is not likely to be

taken up for final hearing in the near future, this Court is of the considered view that the petitioners herein are entitled to the relief of grant of suspension of sentence.

7. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the each of the petitioner shall execute a bond in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate-II, Namakkal, and on further condition that the petitioners shall appear before the concerned Court on the first working day of every month at 10.30.a.m. pending appeal.

-sd/-

04/01/2019

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 JUDICIAL MAGISTRATE,
NO.II, NAMAKKAL

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE CIRCLE,
VAZHAVANTHI NADU POLICE STATION, NAMAKKAL DISTRICT.

5 THE ADDITIONAL SESSIONS JUDGE
NAMAKKAL

+2 C.C. to M/S.S.SUJATHA Advocate on payment of necessary
charges SR.NO.220

Order

in
CRL MP.16646/2018

in CRL.A.NO.804 OF 2018

Date :04/01/2019

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RD 04/01/2019

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