



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Saturday, the Twenty Seventh day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.1782 of 2019
IN
CRL A(MD) No.74 of 2019

PERIYASAMY

... PETITIONER/APPELLANT

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
MUTHAIAHPURAM POLICE STATION,
THOOTHUKUDI,
THOOTHUKUDI DISTRICT
Crime No.357/2016

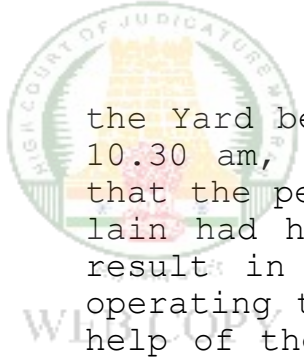
... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by suspending the sentence imposed upon him in S.C.No.126/2017 on the file of the Learned II Additional District Sessions Judge, Thoothukudi, Thoothukudi District dated 07/12/2018 pending disposal of the main Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.A.THIRUVADI KUMAR, Advocate for the petitioner and of Mr.A.ROBINSON, Government Advocate(criminal side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence passed by the II Additional District and Sessions Judge, Thoothukudi, in S.C.No.126 of 2017, dated 07.12.2018 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The case of the prosecution is that the deceased Maharaja was the driver of the lorry bearing No.TN-28-K-1399 of Sri Ganesh Transport and the said lorry was involved in carrying Gypsum from



the Yard belonging to JVP Contract behind SPIC and on 10.10.2016 at 10.30 am, the deceased had taken his lorry for loading Gypsum and that the petitioner/accused, who happens to be a driver of JCB Pocklain had hit upon another lorry of the said Sri Ganesh Transport, result in wordy altercation and the petitioner/accused, who was operating the JCB had lifted the deceased and one Sudhakar with the help of the machine and the said Sudhakar wished away and that the deceased who was tramped in the bucket of the JCB was thrown into the Gypsum and the petitioner/accused had repeatedly assaulted him with the bucket of the JCB and caused his death.

3.It is seen from the records that the trial court convicted the petitioner/accused for the offence under Section 304 IPC and sentenced him to undergo 10 years RI and to pay a fine of Rs.1,000/-, in default to undergo 6 months SI. Aggrieved by the judgment of the trial court, the petitioner is before this court.

4.The learned counsel for the petitioner submitted that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses and the trial court erred in convicting the petitioner without any substantial evidence and the petitioner is in jail for the past one year and that there are arguable points in the main appeal. In view of the above circumstances, the petitioner seeks the relief of suspension of sentence till the disposal of the appeal.

5.It is submitted by the learned Government Advocate (Criminal side) that there are enough materials available on record against the petitioner as per the evidence adduced by the prosecution and there is no infirmity in the prosecution case and prays for dismissal of this petition.

6.This court has carefully considered the rival contentions put forward on either side and also perused the materials available on record.

7.The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that the petitioner is in jail for the past one year and there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this court is of the considered view that the petitioners herein is entitled to the relief of grant of suspension of sentence.

8.Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum to



the satisfaction of the Judicial Magistrate No.1, Thoothukudi and on further condition that the petitioner shall appear before the said court daily at 10.30 am, pending appeal.

sd/-
27/04/2019

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/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, THOOTHUKUDI.
 - 2.THE JUDICIAL MAGISTRATE NO I,
THOOTHUKUDI.
 - 3.THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.
 - 4.THE INSPECTOR OF POLICE
MUTHAIAHPURAM POLICE STATION,
THOOTHUKUDI, THOOTHUKUDI DISTRICT
 - 5.THE SUPERINTENDENT,
PALAYAMKOTTAI.
 - 6.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.A.THIRUVADI KUMAR Advocate SR.No.7567

ORDER
IN
CRL MP (MD) No.1782 of 2019
IN
CRL A (MD) No.74 of 2019
Date :27/04/2019

TK/VR/SAR-4/02.05.2019/3P/8C