

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Nineteenth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.2146 of 2020

IN CRL.A.NO.112 OF 2020

SHEIK ASLAM

[PETITIONER]

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
KANTHIKUPPAM POLICE STATION,
KANTHIKUPPAM.
CR.NO.227/2013.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.112/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence made in the judgment dated 27.01.2020 in SC No.118/2015 on the file of the Additional District and Sessions Judge, Krishnagiri and enlarge the appellant on bail, pending disposal of the Criminal Appeal. [CRL.MP.NO.2146/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.112/2020 on the file of the High Court and upon hearing the arguments of M/S.V.VELUCHAMY, Advocate for the petitioner and of MRS.M.PRABHAVATHI ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by **R. Subbiah, J**)

The petitioner is the third accused in Sessions Case No. 118 of 2015 on the file of the learned Additional District Sessions Judge, Krishnagiri. He faced trial in the aforesaid Sessions Case for the offences punishable under Section 411 and 201 read with Section 302 of Indian Penal Code (in short IPC). After trial, the petitioner/A-3 was found guilty of the charges and therefore, by Judgment dated 27.01.2020, he was convicted for the offence punishable under Section 411 of IPC and sentenced to undergo rigorous imprisonment for three years with fine of Rs.10,000/-, failing which to undergo six months simple imprisonment. For the offence under Section 201 read with Section 302 of IPC, he was convicted and sentenced to undergo

rigorous imprisonment for a period of three years with fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of three years. However, the aforesaid sentences were ordered to run concurrently against the petitioner/first accused. Challenging the Judgment dated 27.01.2020 passed by the court below, the present Criminal Appeal has been filed.

2. Pending Criminal Appeal, the petitioner/A-3 has filed the above Petition for suspension of substantial sentence of imprisonment.

3. The case of the prosecution is that the deceased Nagaraj was the owner of the Tata lorry bearing Registration No. TN 23 BQ 1024. The deceased entered into a contract with Sri Priya Carriers Company Hosur for delivering six tonnes of steel pipes to M/s. Pipes and Traders, Ambattur, Chennai. After loading the steel pipes on 10.07.2013, when the deceased was plying the lorry, the accused 1 and 2 requested the deceased, with whom the deceased is already acquainted with, to drop them at Bargur. The deceased permitted them to board his vehicle. It is the further case of the prosecution that when the vehicle was plying in Krishnagiri-Vaniyambadi Road, the accused 1 and 2 demanded the deceased to stop the lorry which the deceased refused. At that time, the first accused stabbed the deceased with a knife on his throat and the second accused held the deceased which facilitated the first accused to cause another stab injury in his temple region, jaw and left chest. Due to such stab injuries, the deceased died instantaneously. After causing the death of the deceased, the accused have thrown the dead body on the road side bush and taken the lorry with six tonne of steel load. It is further alleged that the accused 1 and 2 have unloaded the steel material in the shop owned by the petitioner/third accused. According to the prosecution, the petitioner/third accused, knowing fully well that the materials were not owned by the accused 1 and 2, had purchased the same for a throw away price of Rs.3,00,000/- when the actual price of six tonne load of steel is Rs.10 lakhs. The prosecution further alleges that the steel pipes were recovered from the shop of the appellant/third accused on 21.11.2013 at 8.00 hours under a recovery mahazar in the presence of witnesses. Thus, the appellant/third accused was charged for the offences under Section 411 and 201 read with Section 302 of IPC. After trial, as mentioned above, the appellant/third accused was convicted and sentenced to undergo imprisonment, which is challenged in the above appeal.

4. The learned counsel for the petitioner/A-3 would vehemently contend that there is no material evidence produced as against the petitioner/A-3, except the confession statement of the accused 1 and 2. According to the counsel for the petitioner, it is well settled that the confession statement of the co-accused is always a weak piece of evidence and based on the same, the conviction of another co-accused cannot be sustained. The learned counsel for the petitioner/A-3 further proceeded to contend that PW7, the witness who attested the recovery mahazar, has only stated that he simply signed the recovery mahazar in the police station and not at the place of seizure. In his cross-examination, PW7 has stated that the steel

pipes were recovered from a shop near Hosur Dargah. On the other hand, PW2, another Mahazar witness has deposed that the stolen articles were recovered from Zuzuvadi. The investigation officer in this case also admitted that even though there are several scrap dealers in the area, no one has been called to stand as witness to the seizure of the goods. Therefore, according to the counsel for the petitioner/A-3, there are glaring inconsistencies in the deposition of PW2 and PW7 with respect to recovery of the material objects namely steel pipes from the shop of the petitioner/A-3. The learned counsel for the petitioner/A-3 would further submit that soon after deliverance of the Judgment, the trial court has granted suspension of sentence for a period of one month to enable the petitioner/A-3 to prefer an appeal before this Honourable Court and the period so granted is expiring on 26.02.2020. Further, the final hearing of the above appeal may take some time and therefore also, he prayed for suspending the substantial sentence of imprisonment of the petitioner/A-3.

5. The learned Additional Public Prosecutor vehemently opposes to grant suspension of sentence to the petitioner/A-3 and she prayed for dismissal of this petition.

6. Having regard to the grounds raised in the Memorandum of Grounds of Criminal appeal filed by the petitioner/A-3 and the submission of the learned counsel for the petitioner/A-3, we are inclined to grant suspension of sentence to the petitioner/accused No.3 pending the final disposal of the Criminal Appeal.

7. Accordingly, the substantive sentence of imprisonment imposed against the petitioner/third accused in the Judgment dated 27.01.2020 passed in S.C. No. 118 of 2015 on the file of the Additional District Sessions Judge, Krishnagiri alone is suspended and the petitioner/third Accused is directed to be enlarged on bail on condition that he 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 Additional District and Sessions Judge, Krishnagiri and on further condition that he shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
19/02/2020

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 ADDITIONAL DISTRICT
SESSIONS JUDGE, KRISHNAGIRI

2 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KANTHIKUPPAM POLICE STATION,
KANTHIKUPPAM.

+1 C.C. to M/S.V.VELUCHAMY Advocate on payment of necessary
charges SR.NO. 3302

Order

in
CRL MP.2146/2020

IN CRL.A.NO.112 OF 2020

Date :19/02/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 20/02/2020

सत्यमेव जयते

WEB COPY