

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Ninth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.2767 of 2020

IN CRL.A.NO.149 OF 2020

1 PUSHPARAJ

[PETITIONERS]

2 KATHIR @ KATHIRESAN

Vs

1 STATE REP.BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
J-6 POLICE STATION,
THIRUVANMIYUR,
CHENNAI.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.149/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioners by order dated 23.01.2020 in S.C.No.283 of 2016 on the file of the learned XVII Additional Sessions Judge, Chennai and release the petitioner on bail pending disposal of the above appeal.[CRL.MP.NO.2767/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.149/2020 on the file of the High Court and upon hearing the arguments of M/S.R.C.PAUL KANAKARAJ Advocate for the petitioner and of MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Criminal Appeal has been is filed by the accused Nos.1 & 2 against the judgment of conviction and sentence passed by the Learned XVII Additional Sessions Judge, Chennai, in S.C.No.283 of 2016 dated 23.01.2020.

2. The Trial Court has convicted the 1st accused for the alleged offence under Section 307 of I.P.C and sentenced him to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine amount of Rs.5,000/- in default to undergo Simple Imprisonment for a period of one year. The 2nd accused was convicted under Section 307 r/w 114 of I.P.C and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year Simple Imprisonment.

3. The case of the prosecution is that on 24.08.2012 when P.W.1 Jeevarathinam was standing in the Ashtalakshmi Garden Coastal road at about 10.30 p.m, the accused herein and four other accused persons came there and the accused No.1 tried to stab with a knife on his stomach and when the same was warded off by P.W.1, he sustained cut injury in his left wrist and thereafter, the accused No.1 caught hold the said witness. At that time, the accused Nos.2 and 3 stabbed the said witness with knives in his stomach and caused grievous injury, thereby attempted to commit murder on the said witness and hence liable to be punished under Sections 147, 148, 294(b), 307, 341 r/w 149 of I.P.C.

4. The trial Court has split up the case against two accused persons since they are absconding and tried the case against other accused persons. After full, the trial Court has found guilty the accused No.1 under Section 307 of I.P.C and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for a period of one year and found guilty Accused Nos.2 to 4 under Sections 307 r/w 114 of I.P.C and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo one year Simple Imprisonment. The trial Court has also ordered to give set off under Section 428 of Cr.P.C with regard to the period which was already undergo by the accused persons.

5. The Learned Counsel for the petitioners/accused Nos.1 & 2 has submitted that in the A.R copy, it is stated that 10 unknown persons have attacked the P.W.1 but in the F.I.R, the name of the accused persons were mentioned. He further submitted that though in the A.R copy it is stated that 10 unknown persons have attacked the PW.1, the prosecution has filed a case against six persons only. He further submitted that in so far as the accused persons who have stabbed the P.W.1 on his stomach are absconding and hence the case was split up against them. He further submitted that already the accused Nos.3 and 4 filed Criminal Appeal Nos.69 & 77 of 2020 in which, this Court has suspended the sentence vide its order dated 27.02.2020 and hence, he requests to extend the same benefit to the petitioners herein also.

6. Per contra, the Learned Government Advocate (Crl.Side) for the respondent has submitted that the charge against the accused Nos.3 & 4 is that they instigated the accused No.1 to stab the P.W.1, whereas, accused No.1 has attacked P.W.1 with a knife with an intention to murder and therefore, the petitioners cannot claim that they should be treated on par with accused Nos.3 & 4. He further submitted that the trial Court after taking into consideration of the documentary and oral evidence has rightly convicted the accused persons and therefore, he prays to dismiss this petition.

7. Considering the facts and circumstances of the case and also taking into consideration the submissions made by the Learned Counsel for the petitioners/accused Nos.1 & 2 that in the A.R copy, it is stated that 10 unknown persons have attacked P.W.1 and also the fact that already this Court has suspended the sentence with regard to

Accused Nos.3 and 4, this Court is inclined to extend the same benefit to the petitioners/accused Nos.1 & 2 also. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners/accused Nos.1 and 2 are directed to enlarge on bail on the following conditions:-

a) Each of the Petitioners/Accused Nos.1 & 2 are directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties of whom, one should be a blood relative each for a like sum to the satisfaction of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai;

b) The Petitioners/Accused Nos.1 & 2 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

c) The Petitioners/Accused Nos.1 & 2 shall stay at Trichy and appear before the Trichy Town police station daily at 10.30 a.m. until further orders.

d) On the failure of the Petitioners/Accused Nos.1 & 2 to comply with any of the aforesaid conditions, it is open to the trial Court to commit the Petitioners/ Accused into custody for undergoing the sentence.

-sd/-

09/03/2020

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.

सत्यमेव जयते

TO

1 THE METROPOLITAN MAGISTRATE,
NO.XVIII, SAIDAPET, CHENNAI

2 THE XVII ADDITIONAL SESSIONS
JUDGE, CHENNAI

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

<https://hcservices.ecourts.gov.in/hcservices/>

WEB COPY

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
J-6 POLICE STATION,
THIRUVANMIYUR, CHENNAI.

7 THE OFFICER IN CHARGE
TRICHY TOWN POLICE STATION,
TRICHY

+1 C.C. to M/S.R.C.PAUL KANAKARAJ Advocate on payment of
necessary charges SR.NO. 4701

Order

in
CRL MP.2767/2020

IN CRL.A.NO.149 OF 2020

Date :09/03/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 11/03/2020



WEB COPY