

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.M.P.No.4476 of 2020

in

Crl.A.No.279 of 2020

Anthony Simson

... Petitioner

Vs

State Rep. By
The Inspector of Police,
Pollachi West Police Station,
Coimbatore District.
Crime No.168/2014

... Respondents

PRAYER : Criminal Miscellaneous Petition filed under Section 389 (1) of Criminal Procedure Code to suspend the sentence imposed on the petitioner/ appellant by the learned V Additional District and Sessions Judge, Coimbatore by Judgment dated 28.11.2019 in S.C.No.120 of 2015 pending disposal of the above Crl.A.No.279 of 2020 on the file of this Court.

For Petitioner : Mr.A.P.Sathyamurthy.

For Respondents : Mrs.M.Prabhavathi,
Additional Public Prosecutor.

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.This Petition has been filed to suspend the sentence imposed on the petitioner/ appellant in Judgment dated 28.11.2019 in S.C.No.120 of 2015 by the learned V Additional District and Sessions Judge, Coimbatore pending disposal of the above appeal.

3. Heard Mr.A.P.Sathyamurthy, learned Counsel appearing for the Petitioner and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the Respondents.

4. It is seen from the records that A1 in the said Judgment has already been released on bail in CrI.M.P.No.18879 of 2019 in CrI.A.No.906 of 2019 by order dated 18.03.2020 and the said order is extracted as follows:

"The petitioner (A1) was convicted by the learned V Additional District and Sessions Judge, Coimbatore for the offences punishable under Sections 364 & 342 r/w149, 309 of IPC in SC.No.120 of 2015 and was sentenced to undergo 7 years rigorous imprisonment for the offence punishable under Section 364 IPC and to pay a fine of Rs.5,000/- and in default to pay the fine amount, to undergo simple imprisonment for two months. The accused was further sentenced to undergo 1 year rigorous imprisonment for the offence punishable under Section 342 IPC and to pay a fine of Rs.1,000/- and in default to pay the fine amount, to undergo simple imprisonment for one month. The accused was also sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC and to pay a fine of Rs.5,000/- and in default to pay the fine amount, to undergo simple imprisonment for two months. Aggrieved over the conviction and sentence passed by the learned V Additional District and Sessions Judge, Coimbatore, the accused had filed an appeal in CA.No.906 of 2019 before this Court. Along with the appeal, he has also filed the present Miscellaneous Application praying for suspension of sentence.

2. Heard Mr.R.Vivekananthan, learned counsel appearing on behalf of the petitioner and Mrs.M.Prabhavathi, learned Additional Public Prosecutor.

3. The case of the prosecution is that due to prior enmity between the accused and the deceased, the present accused (A1) along with three others murdered the deceased and gave an extra judicial confession before the Village Administrative Officer who was examined as PW1. Based on the information given by the Village Administrative Officer, First Information Report was registered against the accused and three others and final report was also filed against them. The learned V Additional District and Sessions Judge, Coimbatore after analysing the evidence on record, convicted all the accused and sentenced them as stated above.

4. Mr.R.Vivekananthan, learned counsel appearing on behalf of the petitioner (A1) drew the attention of this Court to the evidence of PW1 and contended that only during investigation, the accused is said to have given

extra judicial confession before the Village Administrative Officer and that the entire extra judicial confession was not marked before the trial Court Judge. He would further contend that this is a case of circumstantial evidence and all the witnesses except the Village Administrative Officer, wife and the brother of the deceased turned hostile. It is also revealed from the records that both the wife and brother of the deceased are not eye witnesses to the occurrence and in the facts and circumstances, there are arguable points in the main appeal.

5. Per contra, Mrs. M. Prabhavathi, learned Additional Public Prosecutor contended that the accused on his own volition had given extra judicial confession before the Village Administrative Officer, which was also corroborated by the investigation officer and therefore, the trial Court was right in convicting and sentencing the accused.

6. Considering the arguments advanced on both sides, we are of the considered view that only after the final hearing, it can be concluded whether the trial Court is justified in convicting and sentencing the accused based on the evidence of Village Administrative Officer and the Investigation Officer.

7. Hence, the substantial portion of the sentence imposed by the learned Judge is suspended on the following grounds:

(i) The accused 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 II, Pollachi.

(ii) The accused should stay at Coimbatore and appear before the learned Judicial Magistrate I, Coimbatore on the first working day of every month and sign until further orders."

It is also seen that subsequently, A2 and A3 have also been released on bail in CrI.M.P.No.3990 of 2020 in CrI.A.No.881 of 2019.

5. Taking into consideration of the fact that A1 to A3 were already granted bail and role of the petitioner herein who is arrayed as A4, is that he shut the mouth of the deceased and hold on to the body of the deceased and since the entire Judgment is based on the extra judicial confession statement given by PW1, arguable points are involved in this appeal. Hence, this Court is inclined to suspend the sentence imposed on the Petitioner.

6. Accordingly, the substantial portion of the sentence imposed by the learned Judge is suspended on the following conditions:

(i) The accused 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 II, Pollachi.

(ii) The accused should stay at Coimbatore and appear before the learned Judicial Magistrate I, Coimbatore on the first working day of every month and sign until further orders."

7. In the above terms, this Petition is ordered.

-sd/-
15/09/2020

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 V ADDITIONAL DISTRICT
AND SESSIONS JUDGE, COIMBATORE.

2 THE JUDICIAL MAGISTRATE,
NO.II, POLLACHI.

3 THE JUDICIAL MAGISTRATE,
NO.I, COIMBATORE.

4 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE. [FOR INFORMATION]

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
POLLACHI WEST POLICE STATION,
COIMBATORE DISTRICT.

7 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. B.NAMBI SELVAN Advocate on payment of necessary charges

Order

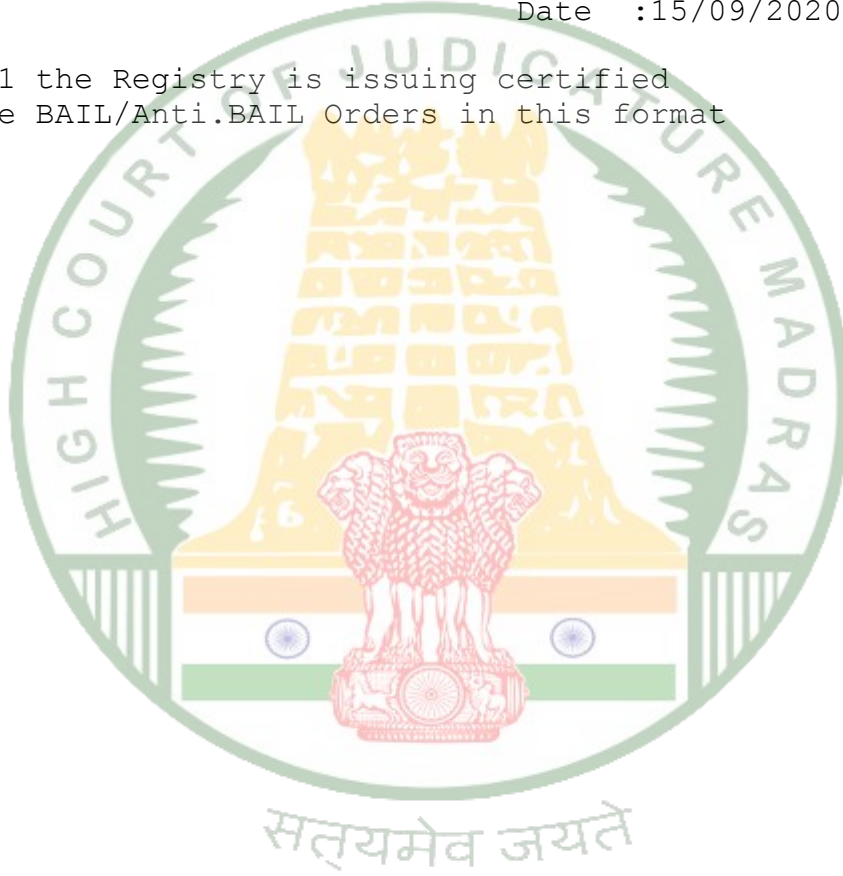
in
CRL MP.4476/2020

in
CRL A.279/2020

Date :15/09/2020

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TA-16/09/2020



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