

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 4419 of 2020

in Crl. A. No. 584 of 2019

Arjunan, Aged 33 years,
S/o. Kaveri,
Bannihalli Puthur Village,
Kaveripattinam,
Krishnagiri District. Petitioner/Appellant

Vs

State represented by
Inspector of Police
Kaveripattinam Police Station
Krishnagiri District. Respondent

PRAYER : Criminal Miscellaneous Petition filed under Section 389 (1) of Criminal Procedure Code praying to suspend the sentence imposed by the learned Additional Session Judge, Krishnagiri in S.C. No. 29 of 2017 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal No. 584 of 2019.

For Petitioner : Mr. M.D. Thirunavukkarasu

For Respondent : Mrs. M. Prabhavathi
Additional Public Prosecutor

O R D E R

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

The matter is heard through "Video Conferencing".

2.The first accused has come before this Court seeking suspension of sentence imposed on him in S.C. No. 29/2017 for the offences punishable under Section 235 (ii) of Cr.P.C. and 302 r/w 109 r/w 34 of I.P.C., to undergo life imprisonment and pay a fine of Rs.5,000/- and to undergo 7 years rigorous imprisonment and pay a sum of Rs.5,000/- for the offences punishable under Section 201 of I.P.C. The said judgment was passed on 21.06.2019.

3. Against the said judgment, Criminal Appeal No. 584 of 2019 has been filed. In the present appeal, suspension of sentence has been taken out by the first accused. It is to be noted that the

second accused has already been granted suspension of sentence by order of this Court dated 02.01.2020.

4. The case of the prosecution is that the first accused who is the husband and second accused who is the wife, administered poison namely Organo Phosphorus to their child. The said murder is said to have been committed because of the suspicion of the first accused that the child was born to the second accused, as a result of extra marital relationship between A2 and A1's brother viz., Lakshmanan, as they were caught in compromising position by A1.

5. The learned counsel appearing for the petitioner would submit that the second accused was already granted suspension of sentence, the reports relied upon by the police are fabricated one and the child died due to diarrhea and fever and there is no occasion for the parents to kill the child. Further, he would submit that the petitioner has to take care of another child and his aged parents. Therefore, he seeks suspension of sentence.

6. However, Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondents would strenuously oppose the petition stating that it is the cold blooded murder of 39 days old newly born child, that too at the hands of the parents. Under Section 106 of the Indian Evidence Act, the burden of proof is on the accused to prove how the child died when the child was in the custody of parents. She would also submit that the postmortem report and other reports would prove that the child was done to death by administering poison. When the child was in the hands of the parents, there is no occasion for some third parties to administer poison and therefore, she would oppose the suspension of sentence very vehemently.

7. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor and perused the materials on record.

8. The learned Additional Public Prosecutor is justified in opposing very vehemently stating that it is a cold blooded murder. This Court also agrees with her. However, it is seen that both the accused are parents who have got another child aged about 4 years to take care of and the first accused has got aged parents to look after. It is also seen that he is the only earning member. If this earning member is detained, the family will be shattered and the child which is outside cannot be groomed properly and moreover, the parents have to be looked after by the first accused.

9. It is the case based on circumstantial evidence. There is no eye-witness and it will take some time for this Court to take up the appeal which has been filed last year, i.e. 2019. Though the first accused, without any humane consideration joined hands with his wife to murder the child, out of humane consideration and sympathy to the other child which is outside, this Court is inclined to suspend the sentence and grant bail to the first accused. Accordingly, the substantive sentence of imprisonment imposed by the Additional

Sessions Judge, Krishnagiri against the petitioner is suspended on the following conditions:

(i) The petitioner is directed to execute his own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) before the Superintendent of Prison, Central Prison, Vellore in view of the prevailing pandemic situation.

(ii) The petitioner/ first accused shall appear before the learned Judicial Magistrate, Krishnagiri, on the first working day of every month at about 10.30 a.m. , pending appeal, until further orders.

-sd/-
21/07/2020

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 SESSIONS JUDGE,
KRISHNAGIRI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

4 THE INSPECTOR OF POLICE,
KAVERIPATTINAM POLICE STATION,
KRISHNAGIRI DT.

C.C. to M/S. M.D.THIRUNAVUKKARASU Advocate on payment of necessary charges

Order

in
CRL MP.4419/2020

in Crl. A. No. 584 of 2019

Date :21/07/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
RD 17/08/2020