

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No.4872 of 2020
in Crl.A No.311 of 2020

Stephen Chelladurai ... Petitioner

vs

State Represented by
The Inspector of Police(L & O),
Central Crime Branch X, Egmore,
Chennai.(Cr.No.105 of 2001) ... Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence of imprisonment imposed by VI Additional Sessions Judge, FAC of IV Additional Sessions Court, Chennai, vide judgement dated 27.02.2020 in S.C.No.504 of 2005 and direct that the appellant be enlarged on bail.

For Petitioner .. Mr.K.Selvakumaraswami

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the first accused in S.C.No.504 of 2005. The trial Court by judgment dated 27.02.2020 convicted the petitioner for the offence punishable under Sections 365 and 302 IPC. The trial Court, for the offence punishable under Section 302 IPC, sentenced him to undergo life imprisonment and for the offence punishable under Section 365 IPC, sentenced him to undergo rigorous imprisonment for a period of seven years, and since the accused is in duress period for the past four years, no fine amount was imposed upon him. Seeking suspension of sentence imposed, the present petition has been filed.

2.The case of the prosecution is that the accused and other took the deceased on the night on 23.1.2001 under the pretext of taking him to the Airport, took him to the isolated place and committed the offence. Thereafter, finding that the deceased-Kanapathi Pillai Thuraisingam has not returned back to U.K., his son came to India and gave a complaint. Initially, a case was registered for man missing by the Korattur Police Station. Later on, on the aforesaid complaint of the son of the deceased, it was

taken up by the Egmore Police Station. Further investigation has been carried on by the Inspector of Police, Central Crime Branch X, Egmore, Chennai.

3. Before the trial Court, the petitioner-accused surrendered himself pursuant to the confession statement made by him followed by recovery, a conviction has been rendered against the petitioner.

4. The learned counsel for the petitioner submitted that the petitioner has been under incarceration for more than 4 ½ years. It is case of circumstantial evidence. A link has not been established by tying up with the events except the recoveries. The prosecution witnesses did not speak about the last scene theory during the first investigation. Thus, the sentence will have to be suspended.

5. Learned Additional Public Prosecutor appearing for the State submitted that recovery has been made not only from this petitioner, but also from the relative of the petitioner. A Mobile Phone has been recovered from P.W.14 and P.W.15, who are the relatives of the other accused-Elias. The said accused is yet to be secured as he was absconding. Considering the nature of the offence committed and in the light of the findings rendered by the trial Court, this petition will have to be dismissed.

6. Upon hearing the submissions made, we do find that there are substantial legal issues to be decided in the appeal. Further more, the petitioner has been under incarceration for nearly four and a half years (4 ½). We are dealing with the case of circumstantial evidence and it is the petitioner, who voluntarily surrendered before this Court. The conviction has been rendered based upon the recovery from the house of P.W.15. Thus, considering the above, we are inclined to suspend the sentence.

7. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes 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 Additional Metropolitan Magistrate, Egmore, Chennai, and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
06/11/2020

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 METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 THE VI ADDITIONAL SESSIONS JUDGE,
FAC OF IV ADDITIONAL SESSIONS COURT,
CHENNAI

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE (L & O),
CENTRAL CRIME BRANCH X,
EGMORE, CHENNAI.

C.C. to M/S. K.SELVAKUMARASWAMI Advocate on payment of
necessary charges

Order

in
CRL MP.4872/2020

in
CRL A.311/2020

Date :06/11/2020

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MK:06/11/2020

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