



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Thursday, the Second day of January Two Thousand Twenty

WEB COPY

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.12821 of 2019

IN CRL.A.NO.584 OF 2019

1 ARJUNAN
2 KASTHURI

[PETITIONERS]

Vs

1 THE INSPECTOR OF POLICE,
KAVERIPATTINAM POLICE STATION,
KRISHNAGIRI DISTRICT

[RESPONDENT]

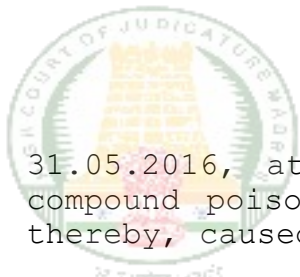
Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.584/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Additional Sessions Judge, Krishnagiri in SC.No.29/2017 and enlarge the petitioners on bail pending disposal of the above Crl.A.584/2019.[CRL.MP.NO.12821/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.584/2019 on the file of the High Court and upon hearing the arguments of M/S.M.D.THIRUNAVUKKARASU 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**]

Petitioners/A1 and A2 faced trial in S.C.No.29 of 2017 on the file learned Additional Sessions Judge, Namakkal. Trial Court, under judgment dated 21.06.2019, convicted the petitioners for offences u/s.302 r/w 109 r/w 34 and 201 IPC and sentenced each of them to life imprisonment and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.302 r/w 109 r/w 34 IPC and 7 years R.I. and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.201 IPC. Trial Court directed that sentences run concurrently. Hence, petitioners seek suspension of sentence.

2. The case of the prosecution is that accused are husband and wife. A1/husband suspected that there was illegal intimacy between A2/wife and his brother Lakshmanan. While so, A2 gave birth to a male child. Suspecting that the child was not born to him, A1 induced A2 to have an abortion which she has also agreed. As a consequence, on



31.05.2016, at her parents house, A2 administered organophosphorus compound poison in the mouth of the child, aged about 39 days and thereby, caused the death of the infant.

3. Learned counsel for petitioners submits that the entire case rests on circumstantial evidence and there is no eye witness to the occurrence. It is highly unimaginable that a mother would kill her own child. Learned counsel submits that the petitioners are presently confined at Central Prison, Vellore and they are in prison for the past six months. Learned senior counsel submits that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. Submitting as above, learned counsel prays for suspension of sentence imposed on petitioners.

4. Learned Additional Public Prosecutor, relying on the counter filed by respondent, vehemently opposes to grant suspension of sentence to the petitioners.

5. When this Court was about to dismiss the petition as regards A1, learned counsel for petitioners sought permission of this Court to withdraw the petition as regards A1 and has also made an endorsement to that effect. **Recording the said endorsement, this petition is dismissed as withdrawn insofar as first petitioner/A1 is concerned.**

6. No doubt, in the present case, an infant child has been done to death. However, considering the fact that all the witness, except the official witnesses, have turned hostile and a girl child, aged 4 ½ years, is in much need of her mother/A2 to take care as also considering the fact that the appeal is not likely to be taken up for final hearing in the near future, this Court is of the view that second petitioner/A2 herein is entitled to the relief of grant of suspension of sentence.

Accordingly, the substantive sentence of imprisonment alone is suspended and second petitioner/A2 is directed to be enlarged on bail on condition that second petitioner/A2 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 Judicial Magistrate, Krishnagiri and on further condition that second petitioner/A2 shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

02/01/2020

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.



1 THE ADDITIONAL SESSIONS JUDGE
NAMAKKAL,

2 THE JUDICIAL MAGISTRATE,
KRISHNAGIRI

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
KAVERIPATTINAM POLICE STATION,
KRISHNAGIRI DISTRICT

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.M.D. THIRUNAVUKKARASU Advocate on payment of
necessary charges SR.NO. 60

Order

in
CRL MP.12821/2019

IN CRL.A.NO.584 OF 2019

Date : 02/01/2020

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RD 03/01/2020