

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Sixth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R.SUBBIAH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.15717 of 2019

IN CRL.A.NO.747 OF 2019

MANIKANDAN @ MICKEL @ APPU [PETITIONER]

Vs

THE STATE REP BY [RESPONDENT]
THE INSPECTOR OF POLICE,
TOWN POLICE STATION,
KARAIKAL, PUDUCHERRY.
CR.NO.79/2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.747/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed against the the petitioner/appellant in S.C.No.3/2017 dated 20.08.2019 on the file of the Learned District and Sessions Judge, Karaikal and enlarge him on bail pending disposal of the Criminal Appeal.[CRL.MP.NO.15717/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.747/2019 on the file of the High Court and upon hearing the arguments of M/S.S.KUMARA DEVAN, Advocate for the petitioner and of MR.BHARATHACHAKRAVARTHY AGP, PONDICHERRY on behalf of the Respondent the court made the following order:-

[Order of the Court was made by **R.SUBBIAH, J**]

Petitioner/A1 along with four others faced trial in S.C.No.3 of 2017 on the file learned District and Sessions Judge, Karaikal. Trial Court, under judgment dated 20.08.2019, while acquitting other accused, convicted petitioner/A1 for an offence u/s.302 IPC and sentenced to life imprisonment and fine of Rs.5,000/- i/d 6 months S.I. Hence, petitioner seeks suspension of sentence.

2. The case of the prosecution is that due to previous enmity between A1 and A2 to A5 assaulted the
<https://nscs.cemilys.gov.in/services/>

deceased using a knife, owing to which the deceased met his instantaneous death.

3. Learned counsel for petitioner/A1 submits that the entire case rests on circumstantial evidence. The last seen theory was also not established. It is only PW-3, who deposed that on 23.03.2014, while he was standing near a workshop, A1 came with a blood stained shirt and a knife, informed him that he murdered the deceased and also warned him not to inform the same to anybody. Learned counsel submits that the evidence of PW-3 is unreliable since prosecution has not established last seen theory. The trial Court arrived at a finding of conviction mainly based on the evidence of PW-3.

4. Learned counsel for petitioner further submits that the petitioner is presently confined at Central Prison, Pondicherry. 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 this Court to suspend the sentence passed against the petitioner/A1.

5. Learned Additional Government Pleader (Puducherry) vehemently opposes to grant suspension of sentence to the petitioner stating that the prosecution has established its case, through material evidences and recoveries, beyond reasonable doubt.

6. Considering the facts and circumstances of the case as also taking into consideration that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioner/A1 and further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner/A1 herein is entitled to the relief of grant of suspension of sentence.

Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner/A1 is directed to be enlarged on bail on condition that the petitioner/A1 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 II, Karaikal and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

06/02/2020

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 DISTRICT AND SESSIONS
JUDGE, KARAIKAL

2 THE JUDICIAL MAGISTRATE,
NO.II, KARAIKAL

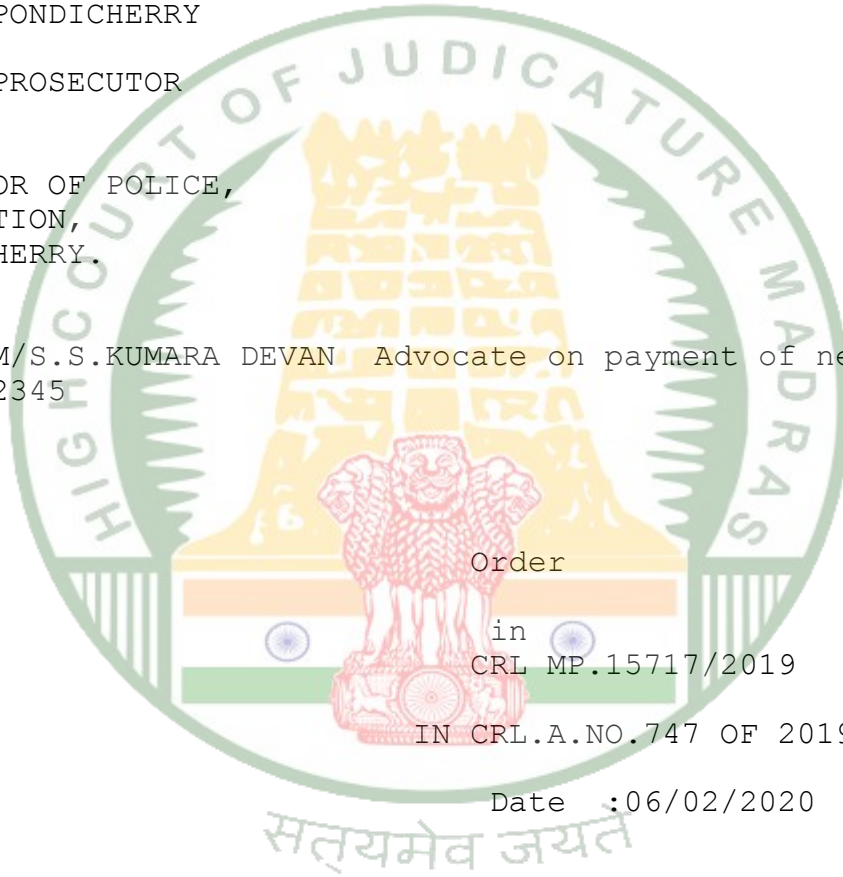
3 THE CHIEF JUDICIAL MAGISTRATE
PUDUCHERRY[FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, PONDICHERRY

5 THE PUBLIC PROSECUTOR
PONDICHERRY

6 THE INSPECTOR OF POLICE,
TOWN POLICE STATION,
KARAIKAL, PUDUCHERRY.

+1 C.C. to M/S.S.KUMARA DEVAN Advocate on payment of necessary
charges SR.NO. 2345



Date :06/02/2020

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RD 06/02/2020

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