

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fifth 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.18713 of 2019

IN CRL.A.NO.894 of 2019

VINOBA @ APPU

[PETITIONER/APPELLANT/ACCUSED]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
T-1 AMBATTUR POLICE STATION,
AMBATTUR, CHENNAI-600 053.
CR.NO.1286/2013.

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed on the petitioner S.C.No.223/2016 dated 30.07.2019 by the learned III Additional Sessions Judge at Poonamallee and to enlarge the petitioner on bail pending disposal of the Crl.A.NO.894 of 2019.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.R.C.PAUL KANAGARAJ, Advocate for the petitioner, and of MRS. M.PRABHAVATHI, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by R. Subbiah, J)

The petitioner/appellant is the first accused in Sessions Case No. 223 of 2016 on the file of the learned III Additional Sessions Judge, Poonamallee. There were three other accused in the Sessions Case. The petitioner/appellant stood charged for the offences punishable under Section 302 of Indian Penal Code (in short IPC). After trial, the petitioner was found guilty of the charge and therefore, by Judgment dated 30.07.2019, he was convicted for the offence under Section 302 of IPC and sentenced to undergo rigorous

imprisonment for life together with fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months. Challenging the Judgment dated 30.07.2019 passed by the court below, the present Criminal Appeal has been filed.

2. Pending Criminal Appeal, the petitioner has filed the above Petition for suspension of substantial sentence of imprisonment.

3. The case of the prosecution is that the deceased Niranjan was doing Electrical work and residing at No.12, Nathamuni II Cross Street, Oragadam, Ambattur, Chennai. It is the further case of the prosecution that on 06.08.2013 at about 7.30 pm one Venkatesan, along with A-2 had teased Kamala, aunt of PW2 and the deceased. PW2 therefore questioned the said Venkatesan and A-2. At that time, A-1 and A-2 hit PW2 by stating as to how dare he can question his friend Venkatesan. This incident was informed by Kamala to the deceased Niranjan. Therefore, the deceased, being relative of PW2 questioned the accused persons on the same day as to why they have teased their aunt Kamala. In this context, enmity developed between A-1 to A-4 and the deceased. Thereafter, on the intervening night of 06/07.08.2013 at 12.30 am the accused 1 to 4 with a common intention to murder the deceased went to the house of the deceased and at that time PW1 alone was in the house. When PW1 questioned A-1 to A-4 as to why they are searching for the deceased, they said there is nothing. This was intimated by PW1 over phone to the deceased. Thereafter, PW1 along with the deceased met the accused 1 to 4 at about 12.45 am when they were standing in the end of Nathamuni Second Cross Street. During such conversation, the deceased asked PW1 to go home. Subsequently, on the morning of 07.08.2013, PW1, on information went to Nathamuni Second Cross Street where he saw the deceased lying dead.

4. The learned counsel for the petitioner/appellant submits that there are several inconsistencies in the evidence adduced by the prosecution. According to the learned counsel, PW1 and PW2 are related to the deceased. PW1 did not witness the occurrence. Even though it is stated that PW2 witnessed the occurrence, he had simply deposed that he was threatened by the accused not to disclose the occurrence to any one and intimidated him. Therefore, according to the prosecution, PW2 did not inform any one about the murder of the deceased until PW1 has given the complaint to the police. If really PW2 had witnessed the occurrence, being a relative of the deceased, he would not have left the deceased alone in the scene of occurrence when the accused 1 to 4 have assaulted the deceased and he could have called for the help of others. Further, PW2 could have atleast informed the incident to any one. But the protracted silence on the part of PW2 would only suggest that he did not witness the occurrence, as claimed by the prosecution. Further, except PW2, there was no other witness examined by the prosecution as eye witness of the occurrence. In other words, all the other witnesses examined by the prosecution or hear-say witnesses. The learned counsel for the petitioner further submits that this Court, by order dated 02.11.2019 in CrI.MP No. 15239 of 2019 in CrI.A. No. 735 of 2019 granted an order suspending the sentence imposed on the A-3 and A-4.

Further, since the final hearing of the criminal appeal will take some time, he seeks for suspension of substantial period of sentence.

5. The learned Additional Public Prosecutor vehemently opposes to grant suspension of sentence to the petitioner and she prayed for dismissal of this petition.

6. Having regard to the submissions of the learned counsel for the petitioner/appellant, the grounds raised in the appeal memorandum filed on behalf of the petitioner and the other facts and circumstances of the case, we are inclined to grant suspension of sentence to the petitioner/accused pending the final disposal of the Criminal Appeal.

7. Accordingly, the substantive sentence of imprisonment imposed against the petitioner/accused by the trial court in the Judgment dated 30.07.2019 passed in S.C. No. 223 of 2016 alone is suspended and the petitioner/Accused is directed to be enlarged on bail on condition that he 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, Ambattur, Tiruvallur District and on further condition that he shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
05/02/2020

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 III ADDITIONAL SESSIONS JUDGE,
POONAMALLEE.

2 THE JUDICIAL MAGISTRATE, AMBATTUR,
TIRUVALLUR DISTRICT

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
T-1 AMBATTUR POLICE STATION,
AMBATTUR, CHENNAI-600 053.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

<https://hcservices.ecourts.gov.in/hcservices/>

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

+1 C.C. to M/S.R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges SR.NO.2223

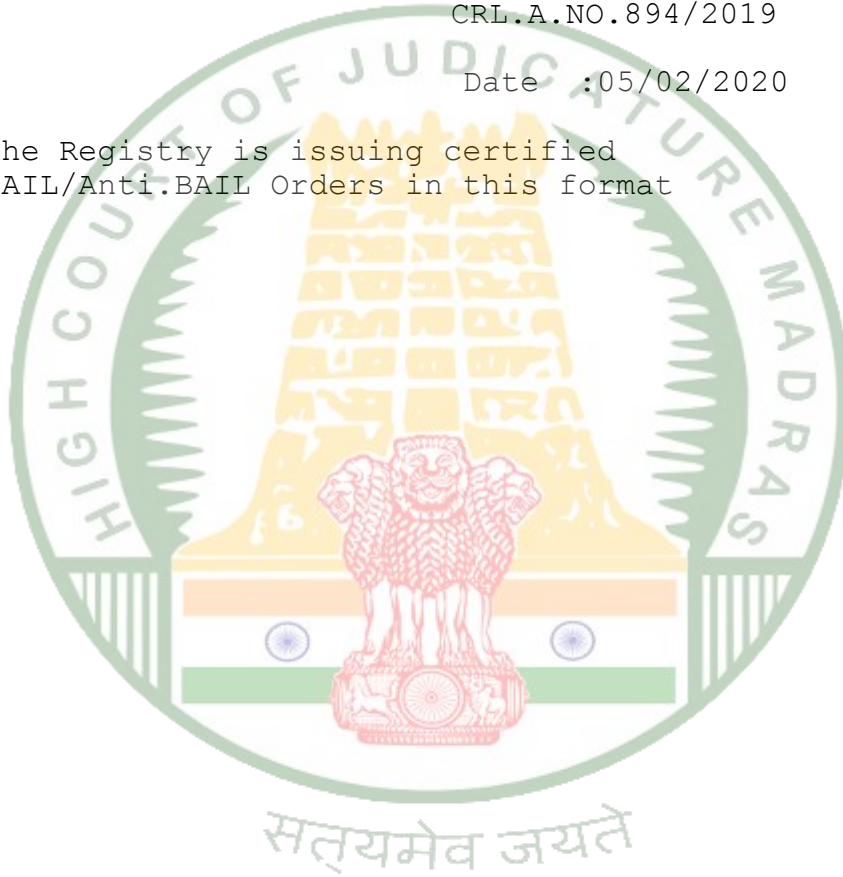
Order

in
CRL MP.18713/2019
in
CRL.A.NO.894/2019

Date :05/02/2020

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