



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Eleventh day of February Two Thousand Twenty

PRESENT

WEB COPY

The Hon`ble Mr.Justice T.RAJA
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.459 of 2020

IN

CRL A(MD) No.607 of 2019

MARIMUTHU

... APPELLANT/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
VILATHIKULAM POLICE STATION,
TUTICORIN DISTRICT.
CRIME NO.120/2014

... RESPONDENT/ RESPONDENT/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed in judgment dated 02.12.2019 made in S.C.No.254/2015 on the file of the 1st Additional District and Sessions Court, Tuticorin and enlarge petitioner on bail pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.C.MAYILVAHANARAJENDRAN, Advocate for Mr.T.SEKAR, Advocate for the petitioner and of Mr.K.K.RAMAKRISHNAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by T.RAJA.J)

The petitioner/sole accused in S.C.No.254/2015 on the file of the learned I Additional District and Sessions Judge, Tuticorin, having suffered the conviction and consequential sentence under Section 302 I.P.C, has come to this Court, seeking suspension of sentence, during the pendency of appeal.

2.Learned counsel appearing for the
petitioner/appellant/Accused pleaded that the deceased was all the
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time chasing and following the appellant's wife. At one time, when the appellant's wife was taking bath in an uncovered bathroom, he had seen it. Subsequently, he was warned not to repeat the same in future. Again, ignoring the warning and advice given by the appellant/accused, he has again repeated the same mistake. Therefore, the appellant/accused said to have confronted with the deceased. At that time, the deceased only started pelting stones, attacking the appellant/accused. As a result, the appellant/accused alleged to have attacked the deceased with knife, due to which, the deceased succumbed to injuries.

3.The learned counsel appearing for the petitioner/appellant has further pleaded that the prosecution stated their version based on the evidence of P.W.2, a school going boy, studying 11th standard in an Aided School in Ilanthaikulam Village. P.W.2, in his deposition, stated that, he after seeing the fight between the appellant and deceased, rushed to the working place of his parents namely P.Ws.1 & 6 and informed them about the occurrence. On information, P.Ws.1 & 6 arrived the scene of occurrence and they had also seen the fight and consequent knife assault made by the accused on the deceased. Whereas, the teacher of P.W.2, who was examined as D.W.1 has deposed before the Court that on the date of incident, P.W.2 was attending classes in the school. D.W.1 has also produced the Attendance Register to prove the presence of P.W.2 in the school on the date of occurrence. That clearly shows that on the date of occurrence I.e on 28.04.2014 at 10.30 a.m, P.W.2 was very much available in the school. Hence, it is clear that the evidence adduced by the prosecution I.e P.W.2 along with P.Ws.1 & 6 is also unaccepted and unsafe.

4.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, opposing the above prayer for suspension and sentence, pleaded that it is an Aided School, in which, P.W.2 was pursuing his 11th standard. It is usual practice for the Aided Schools to make attendance to all of the students in the month of April. Hence, the trial court disbelieved the evidence adduced by D.W.1/teacher and came to the right conclusion, based on the evidence of P.Ws.1, 2 and 6.

5.Considering the above submissions, we are of the view that the arguments adduced by the learned Additional Public Prosecutor cannot be accepted for the simple reason that D.W.1/teacher of P.W.2 not only produced the Attendance Register before the Court, but also, came to the witness box and deposed that P.W.2 was very well available in the school on the date of incident and he was listening the classes. Therefore, we are of the view that the evidences relied on by the trial court i.e P.Ws.1, 2 and 6 are prima facie unbelievable. This aspect can be taken into consideration only at the time of final hearing.



6.Considering the above submissions, we are of the view that the findings and conclusion reached by the Trial Court certainly requires reconsideration by this court, during the pendency of this appeal. Further, considering the fact that the petitioner/accused has been languishing in jail from the date of judgment and the entire fine amount has already been paid by him, we are of the view that impugned sentence alone can be suspended and he can be released on bail, pending appeal.

7.In the result, this petition is ordered. The substantive sentence of imprisonment imposed against the petitioner/accused is suspended on condition that the petitioner/accused shall execute 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 the learned Judicial Magistrate, Vilathikulam;

(a)The petitioner shall report before the learned Judicial Magistrate, Vilathikulam at 10.30 a.m., on the first working day of every month pending disposal of the appeal;

(b)The petitioner shall not leave the jurisdiction of Tamil Nadu without seeking leave of this Court till the disposal of the Appeal; and

(c) The petitioner shall furnish his residential address, change of address, if any and the phone numbers to the respondent police.

sd/-
11/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TUTICORIN.

2.THE JUDICIAL MAGISTRATE, VILATHIKULAM.

3.THE CHIEF JUDICIAL MAGISTRATE,
TUTICORIN DISTRICT.

4.THE INSPECTOR OF POLICE
VILATHIKULAM POLICE STATION,
TUTICORIN DISTRICT.



5. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.T.SEKAR Advocate SR.No.2857

ORDER
IN
CRL MP (MD) No.459 of 2020
IN
CRL A (MD) No.607 of 2019
Date :11/02/2020

VS
TK/VR/SAR.3/13.02.2020/4P/8C