



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

Wednesday, the Twenty Third day of September Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM
and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

Crl.M.P.(MD) Nos.4393 and 4394 of 2020

in

Crl.A.(MD) No.281 of 2020

PANDI

... PETITIONER/APPELLANT/ACCUSED No.2
IN CRL.M.P.(MD) No.4393 OF 2020

PREMKUMAR

... PETITIONER/APPELLANT/ACCUSED No.9
IN CRL.M.P.(MD) No.4394 OF 2020

Vs

STATE REP.BY

THE INSPECTOR OF POLICE,
RAJATHANI POLICE STATION,
THENI DISTRICT.

CRIME NO.16 OF 2017

... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH THE PETITIONS

Common Prayer in Crl.M.P.(MD) Nos.4393 and 4394 of 2020:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence and granting bail in S.C.No.166 of 2017 on the file of the learned Additional District and Sessions Judge, (FTC), Theni, Theni District dated 03.03.2020 till the disposal of the Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.KATHIRVELU, Senior Counsel for MR.S.BALAJI, Advocate for the petitioner in both the petitions and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent in both the petitions, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

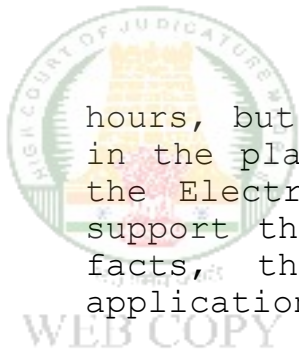
Crl.M.P(MD)No.4393 of 2020 has been filed by the Petitioner/appellant/A2 seeking to suspend the sentence and granting bail in S.C.No.166 of 2017, on the file of the learned Additional District and Sessions Judge(FTC), Theni, Theni District, till the disposal of the Criminal Appeal.

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4.The case of the prosecution is that on 15.1.2017, i.e., on the day of Mattu Pongal, Reckla Race was conducted in the village of Theppampatti, where, dispute arose between the deceased and the accused party. Thereafter, all the accused armed with stones, sticks and wooden locks had gone to the house of the deceased at 8.30 p.m. and scolded and they were pacified and thereafter, at 9.30 p.m, when the deceased had gone to a shop to fetch Beedi, he was brutally attacked by the accused party and thereby the deceased died on the spot.

6.Mr.S.Kathirvelu, learned Senior Counsel appearing on behalf of the Petitioners would submit that in the First Information Report, it is stated that 11 named accused and others have caused injuries on the deceased, but charge sheet was laid only against 10 accused persons. The trial Court, has not totally believed and relied upon the evidence of eye-witnesses P.W.1 to P.W.6, but, applying the **Masalti's Rule** convicted the accused. It is further submitted that the name of P.Ws.3 and 6 have not been found place in the First Information Report and the entire evidence of the alleged eye-witnesses are very vague and they did not speak about the overt-acts attributed against the accused. He drew the attention of this Court to the evidence of P.Ws 1 to 3 to substantiate the said contention.

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



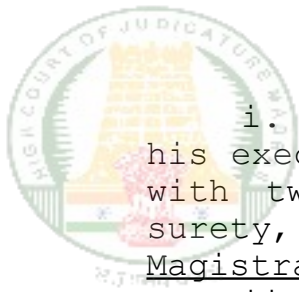
hours, but, no witnesses speak about the availability of the light in the place of occurrence and on the contrary, the staff from the Electricity Board, who was examined as P.W.15 also did not support the case of the prosecution and in the light of the above facts, the learned Senior Counsel prays for allowing the applications filed seeking suspension of sentence.

8.Per contra, Mr.R.Anandhraj, learned Additional Public Prosecutor would submit that P.W.1 to P.W.3 and P.W.6 have categorically deposed before the trial Court with regard to the dispute ensued between the parties on the date of Pongal Festival and the attack made by the accused on the deceased. He further submitted that P.W.20 in his Chief-examination itself, has explained the reason for delay in reaching the First Information Report to the Court. According to the learned Additional Public Prosecutor, the Post-mortem Doctor P.W.17 has clearly stated that the death was due to the attack made by the accused with stones and sticks. It is the contention of the learned Additional Public Prosecutor that P.Ws 1 to 3 have clearly spoken about the overtact against the second accused.

9.At this juncture, the learned Senior Counsel appearing on behalf of the Petitioners seek permission of this Court to withdraw this Petition filed in respect of first Petitioner/A2 and hence the **Petition as against the first Petitioner/A2 in Cr.M.P (MD) No.4393 of 2020 is dismissed as not pressed.**

10.In the matter on hand, a perusal of the First Information Report would show that the criminal case in Cr.No.16 of 2017 was registered on the file of the respondent, in which, it has been clearly stated that the offence was committed by 11 named accused and other accused. However, the final report was laid only against 10 accused persons. The trial Court, after considering the evidence produced by the prosecution, disbelieved the story of recovery of weapons in pursuance of the confession made by the accused persons. Indisputably, names of P.W.3 and P.W.6 who were said to have witnessed the crime are not mentioned in the First Information Report. It is further seen that the evidence of P.W.1 to P.W.3 and P.W.6 are vague and there is no reference about the overt-acts against each of the accused, neither in the First Information Report nor in their evidence. The second Petitioner/A9's name is not found in the First Information Report.

11.In the light of the above facts, we are of the opinion that the accused/A9 is entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition in Crl.M.P (MD) No.4394 of 2020 is allowed and the substantive sentence of imprisonment imposed on the said petitioner/A9 alone is suspended, subject to the following conditions:



i. The petitioner/A9 is directed to be enlarged on bail on his executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood-related surety, each for a like sum to the satisfaction of the Judicial Magistrate, Aundipatty.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioner shall appear before the learned Judicial Magistrate Aundipatty, at 10.30 a.m. on the first working day of every English Calendar month, until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
23/09/2020

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FTC) THENI, THENI DISTRICT.

2 THE JUDICIAL MAGISTRATE,
AUNDIPATTY.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI.

4 THE INSPECTOR OF POLICE
RAJATHANI POLICE STATION,
THENI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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

+1. C.C. to M/S.S.BALAJI Advocate SR.No.6572

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ORDER
IN
Crl.M.P.(MD) Nos.4393
and 4394 of 2020
in
Crl.A.(MD) No.281 of 2020
Date :23/09/2020

vsn
JM/VR/SAR IV/28.09.2020/5P/8C