



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

Wednesday, the Eighth day of January 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.10802 of 2019

IN

CRL A(MD) No.584 of 2019

PANDIAN

... PETITIONER/APPELLANT/
ACCUSED No.2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
CINNAMANOR POLICE STATION,
THENI DISTRICT.
CRIME NO.265/2013

... 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 on the petitioner by the learned Additional District and Sessions Judge (Fast Track Court) Theni in S.C.No.104/2014 dated 27.08.2019 and enlarge the petitioner on bail pending disposal of the Criminal Appeal on the file of this Honourable Court.

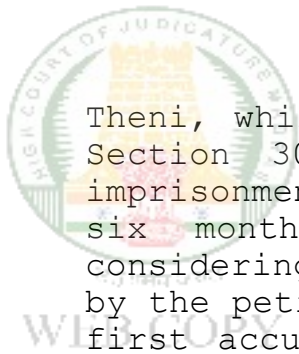
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.A.SIVA SUBRAMANIAM, Advocate for Mr.S.PALANI PACKIAM, Advocate for the petitioner and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.104 of 2014, dated 27.08.2019, by the learned III Additional District and Sessions Judge [Fast Track Court], Theni.

2.Learned counsel appearing for the petitioner/appellant assailing the impugned conviction and sentence argued that the learned Additional District and Sessions Judge [Fast Track Court],

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



Theni, while convicting the the petitioner/A2 for the offence under Section 302 r/w. 149 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment, has seriously erred in not considering the case of the defence that when there was no overtact by the petitioner/A2 to aid the commission of offence along with the first accused and the unbelievable evidence adduced by P.Ws.1 and 2 and insofar as the petitioner/A2 is concerned, it was emphatically brought to the notice of the Trial Court that the so-called eyewitnesses viz., P.Ws.1 and 2 were cooked up and there was no iota of evidence to prove their presence at that time and the place of occurrence, for the simple reason that when P.W.1 deposed that she went to Chinnamanoor Police Station to give a complaint, P.W.13 - Selvakumar, who is working as a Teacher at Erasakkanayakkanoor Higher Secondary School, has preferred a complaint on 10.09.2013 at 06.30 a.m., whereas the case of the prosecution states that the incident took place on 10.09.2013 at 1.30 a.m. and a complaint was lodged only at 04.00 a.m. The second material contradiction placed before the Trial Court by the petitioner/A2 was that on 09.09.2013 when P.Ws.1 and 2 were sleeping in the house, which is 2 kms. away from the occurrence place, they cannot hear the noise and witness the occurrence due to mike set sound on the eve of Vinayagar Saturthi Festival. Therefore, the question of witnessing the occurrence allegedly narrated by P.Ws.1 and 2 that they have seen the first and second accused assaulting and causing the death of the deceased is far from acceptance.

3.Continuing his arguments, the learned counsel appearing for the petitioner/appellant submitted that even if the case of the prosecution is accepted that the incident took place at 1.30 a.m. on 10.09.2013, it is highly improbable to accept the evidence of P.Ws.1 and 2, which cannot be construed as a safe evidence to reach the conclusion that the petitioner/A2 was also one of the accused aiding the commission of offence.

4.Adding further, the learned counsel appearing for the petitioner submitted that the allegation made by the prosecution against the petitioner/A2 that he has beaten up the deceased was not substantiated for the reason that even if there was an assault said to have been made by the petitioner/A2, there was no corresponding injury with the beating of the petitioner/A2 using his hands, inasmuch as the medical evidence is also completely absent and there is no grievous injury or injury said to have been caused by the petitioner/A2 that has been established by the prosecution side. Therefore, pending this appeal, the sentence imposed on the petitioner may be suspended, failing which, the petitioner/A2 would be put to grave prejudice.

5.Concluding his arguments, the learned counsel appearing for the petitioner submitted that the petitioner/A2 has got a fair opportunity to be heard before this Court and in view of no substantial



evidence and several suspicion and doubts brought to the notice of the Trial Court in respect of the overtact said to have been made by the petitioner/A2, all the evidences have been completely overlooked by the Trial Court.

6. In reply, Mr. R. Anandaraj, learned Additional Public Prosecutor appearing for the respondents opposing the above said prayer, contended that it is not proper on the part of the petitioner/A2 to say that there was no overtact while causing death of the deceased along with the first accused. Although he has supported the findings and conclusions in respect of the petitioner/A2 for awarding life sentence, he has also submitted that the death was only due to the sudden attack inflicted by the first accused. However, the material contradictions placed before us by the petitioner/appellant that it was absolutely improbable for P.Ws. 1 and 2 to witness the occurrence has not been met by the Trial Court. Therefore, *prima facie*, we are of the view that the substantive sentence of imprisonment imposed against the petitioner/A2 may be suspended and accordingly, it is suspended on condition that he 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, Uthamapalayam, Theni District;

(a) The petitioner shall report before the learned Judicial Magistrate, Uthamapalayam, Theni District, at 10.30 a.m., on the first working day of every English Calendar 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 petitioners shall furnish his residential address, change of address, if any and the phone numbers to the respondent police.

sd/-
08/01/2020

/ TRUE COPY /

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

TO

1. THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE
(FAST TRACK COURT), THENI.

2. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE
(FAST TRACK COURT), THENI.

<https://hcservices.tn.courts.gov.in/Service>



3.THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM, THENI DISTRICT.

4.THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

5.THE INSPECTOR OF POLICE
CINNAMANOR POLICE STATION,
THENI DISTRICT.

6.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+2. C.C. to M/S.S.PALANI PACKIAM Advocate SR.No.369

ORDER
IN
CRL MP (MD) No.10802 of 2019
IN
CRL A (MD) No.584 of 2019
Date :08/01/2020

SMN2
TK/VR/SAR.2/13.01.2020/4P/10C