



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Eighth day of January Two Thousand Twenty

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PRESENT

The Hon`ble Mr.Justice T.RAJA

and

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.11230 of 2019

IN

CRL A(MD) No.214 of 2019

P.CHINNAN

... APPELLANT/ACCUSD

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
MAYILADUMPARAI, THENI,
THENI DISTRICT.
CRIME NO.121/2014

... 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 of imprisonment imposed by the learned Additional District and Sessions Judge, Fast Track Court, Theni in S.C.No.108 of 2015 dated 22/10/2018 and enlarge the petitioner/appellant on bail, pending disposal of the above said criminal appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.P.ANDIRAJ, 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.108 of 2015, dated 22.10.2018, by the learned Additional District and Sessions Judge [Fast Track Court], Theni.

2.Learned counsel appearing for the petitioner/appellant assailing the impugned conviction and the consequential sentence imposed by the Trial Court placed before us four fold submissions.

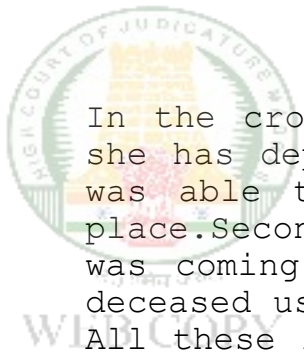
<https://hcservices.ecourts.gov.in/hcservices/>



Firstly, the petitioner/accused are brothers. The appellant/accused is the younger brother and the deceased is the elder brother. Therefore, there was no motive to lay the serious charge against the petitioner, younger brother. Secondly, the learned counsel appearing for the petitioner pleaded that the prosecution case put against the petitioner/appellant with the evidence of P.Ws.1 and 2, wife and daughter of the deceased is wholly imaginary and the same having several infirmities cannot be believed. Explaining further, the learned counsel appearing for the petitioner submitted that when P.W.1 has pleaded in her chief-examination that she has witnessed the occurrence while the petitioner/accused was perpetuating assault, in her cross-examination took a different stand that she has not seen the occurrence ensued between the petitioner/accused and the deceased and when the deceased was going by Motorcycle, she was able to hear the noise coming out of the fight ensued between the petitioner/accused and the deceased. Therefore, the evidence placed before the Trial Court by the prosecution that P.Ws.1 and 2, wife and daughter of the deceased have witnessed the incident is wholly concocted and it is not natural. Thirdly, the learned counsel appearing for the petitioner pleaded that it is an admitted case of the prosecution that the petitioner/accused was coming out from inside his house on hearing the challenge made by the deceased using some abusive words. It was also yet another admission by both the parties that the petitioner/accused was unarmed. In support of his submission, the learned counsel appearing for the petitioner drew our attention to the evidence of Ex.P.1 that after the wordy quarrel, the petitioner/accused has picked up an iron rod and assaulted the deceased on his head and the left leg. Even the medical evidence also clearly supports the case of the defence side that there are no serious injuries. Hence, pending appeal, the sentence imposed on the petitioner may be suspended, so that, the petitioner/accused would be able to make some arrangements to eke out the livelihood of the family members.

3.Opposing the above said prayer, Mr.R.Anandaraj, learned Additional Public Prosecutor appearing for the respondent submitted that both the petitioner/accused and the deceased are brothers. The petitioner/accused being younger brother ought not to have come out to his house although there was a provocative challenge made by the deceased. Adding further, the learned Additional Public Prosecutor submitted that the evidence assailed by the petitioner/appellant that P.Ws.1 and 2 cannot be called as eyewitnesses cannot be entertained, the reason being, the house of both the petitioner/accused and the appellant are situated opposite to each other.

4.Although the prosecution spoke that the mother and daughter of the deceased were present and witnessed the incident, we are unable to find any merit thereon, the reason being, when P.W.1 has deposed that she has witnessed the occurrence while the accused was assaulting the deceased with iron rod on his head and the left leg.



In the cross-examination, she has not consistently spoken, because she has deposed that the deceased was going by Motorcycle, but she was able to hear the sound only and then reached the occurrence place. Secondly, when the incident took place, the petitioner/accused was coming out of his house only to answer the call given by the deceased using some abusive language. Thirdly, he was also unarmed. All these issues are to be looked into when the appeal is taken up for final hearing.

5. Therefore, considering the prayer made by the petitioner/accused that he has also to make some suitable arrangements to eke out the livelihood of his family members, the substantive sentence of imprisonment imposed against the petitioner 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 District Munsif-cum-Judicial Magistrate, Aundipatti, Theni District;

(a) The petitioner shall report before the learned District Munsif-cum-Judicial Magistrate, Aundipatti, 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 petitioner shall furnish his residential address, change of address, if any and the phone numbers to the respondent police.

sd/-
08/01/2020

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

TO

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

2. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
AUNDIPATTI, THENI DISTRICT.

3. THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.



4. THE INSPECTOR OF POLICE,
MAYILADUMPARAI, THENI,
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.PANDIRAJ Advocate SR.No.414

ORDER
IN
CRL MP (MD) No.11230 of 2019
IN
CRL A (MD) No.214 of 2019
Date :08/01/2020

SMN2
TK/VR/SAR.2/13.01.2020/4P/8C