

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 17.03.2021

CORAM

THE HON'BLE MR. JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

CrI.M.P.No.548 of 2021

in CrI.A.No.30 of 2021

Anjalai

...Petitioner

Vs.

State represented by
The Inspector of Police,
Vadalur Police Station,
Cuddalore District,
(Crime No.241 of 2016)

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence of imprisonment on 17.12.2020 passed by the learned I Additional District & Sessions Court, Cuddalore in S.C. No.378 of 2018 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.R.Bharathkumar

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

ORDER

V.SIVAGNANAM, J

This criminal miscellaneous petition has been preferred seeking to suspend the sentence imposed on the petitioner by judgment and order dated 17.12.2020 in S.C. No. 378 of 2018 on the file of the learned I Additional District & Sessions Court, Cuddalore (for short 'the trial Court') and to enlarge the petitioner on bail.

2. The petitioner, who was the first accused in S.C. No.378 of 2018 before the trial Court, was convicted and sentenced as follows on 17.12.2020:

S.No.	Provision under which convicted	Sentence
1.	Under Section 302 I.P.C	Life imprisonment and fine of Rs.2,000/-, in default six months simple imprisonment.

3. Challenging the above conviction and sentence, the petitioner has filed CrI.A.No.30 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.R.Bharath Kumar, learned counsel for the petitioner and Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the petitioner submitted that the deceased/Gunasekaran and the accused had illicit relationship and lived together as husband and wife; thereafter, Gunasekaran developed illicit relationship with one Uma Maheshwari and did not live with the accused and hence, the accused quarrelled with the deceased; due to the strained relationship between them, on 23.06.2016, about 1.00 a.m, when the deceased was sleeping in the house of the accused, she murdered him by cutting his neck; to prove the case, the prosecution relied upon the extra judicial confession statement given by the accused and the alleged recovery of weapon; the presence of Vijayaragavan (P.W.5) near the place of occurrence is also doubtful; the petitioner has been in custody for a long period and pleaded to suspend the sentence slapped on the petitioner and grant bail.

6. The learned Additional Public Prosecutor appearing for the respondent opposed to suspend the sentence, on the ground that there is a *prima facie* case against the petitioner and hence, pleaded to dismiss the petition.

7. We have considered the submissions of the learned counsel for the parties and perused the materials on record.

8. On a perusal of records, it is seen that the accused and Gunasekaran had illicit relationship. Admittedly, Gunasekaran was found in the house of the accused but, the prosecution have not produced any eye witness to the occurrence. The prosecution relied upon the extra judicial confession given by the accused and the recovery of alleged weapon i.e., knife (M.O.9), based on the disclosure statement of the accused relied upon by the trial Court. Apart from this, one Vijayargavan (P.W.5) deposed in favour of the prosecution. It is contended by the petitioner that Vijayaragavan's (P.W.'s) presence near the place of occurrence is doubtful and hence, it cannot be taken into consideration to support prosecution case.

9. With regard to suspension of sentence, the following observations of the Supreme Court in Kashmira Singh Vs. State of Punjab reported in [AIR 1977 SC 2147] has to be considered at this stage:

the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person : "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, ,until we hear your appeal, you must remain in jail, even though you may be innocent ?" What confidence would such administration of justice inspire in the mind of the public ? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal ? Would it not be an affront to his sense of justice ? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it ? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and- sentence.'

10. The petitioner has raised substantial grounds in the appeal which require detailed appraisal. Moreover, the petitioner has been in incarceration from 17.12.2020. Further, the appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

11. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the trial Court.

(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; and

(iii) The petitioner shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

-sd/-
17/03/2021

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 I ADDITIONAL DISTRICT AND SESSIONS COURT,
CUDDALORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
VADALUR POLICE STATION,
CUDDALORE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+1 C.C. to M/S. R.BHARATH KUMAR Advocate on payment of necessary charges SR NO. 3533

Order

in

CRL MP.548/2021

in

CRL A.30/2021

Date :17/03/2021

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