



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.876 of 2021

in

Crl.A.No.37 of 2021

Mahadevan

.. Petitioner/A1

Vs.

State through its
Inspector of Police,
Singarapettai Police Station,
Krishnagiri District.
(Crime No.456 of 2015)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed upon the petitioner by judgment and order dated 30.11.2020 passed in S.C.No.62 of 2019 on the file of the learned Additional District Sessions Judge, Krishnagiri and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.F.Wellington

For Respondent : Mr.R.Muniyapparaj
Government Advocate (Crl.Side)

O R D E R

(Order of the Court was made by R.PONGIAPPAN, J.)

This criminal miscellaneous petition has been preferred by the 1st accused seeking to suspend the sentence imposed upon him, by judgment and order dated 30.11.2020 passed in S.C.No.62 of 2019 on the file of the learned Additional District Sessions Judge, Krishnagiri and to enlarge him on bail pending disposal of the appeal.



2. The petitioner, who is the 1st accused in S.C.No.62 of 2019 on the file of the learned Additional District Sessions Judge, Krishnagiri, was convicted of the offence under Section 302 IPC and sentenced to undergo Life imprisonment along with fine of Rs.5,000/-, in default, simple imprisonment for six months. Further, the petitioner/A1 was convicted of the offence under Section 120(b) of IPC and was sentenced to undergo Life imprisonment along with fine of Rs.5,000/-, in default, simple imprisonment for six months.

3. Challenging the above conviction and sentence, the petitioner/A1 has filed CrI.A.No.37 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.F.Wellington, learned counsel for the petitioner/A1 and Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. The case of the prosecution is as follows:

The deceased Mayandi @ Subramani, is the father-in-law of the petitioner. Since the wife of the petitioner viz., Alamelu, eloped with one Karthick with the help of the deceased, the petitioner/A1, developed enmity against the deceased. On 13.08.2015, at about 8.30am, when the deceased is in his residence both the petitioner/A1 and the other accused in this case, by using the iron rod attacked the deceased on his right neck. Due to the attack, blood oozed out from his neck, as a result, the said Mayandi @ Subramani died. Thus, the petitioner/A1 committed the offence punishable under Sections 120 (b) and 302 IPC.

6. The learned counsel appearing for the petitioner/A1 would contend that on the date of occurrence, the petitioner/A1 took the bike of PW13 at 6.00pm and returned the same on the next day 14.08.2015 early morning and thereafter, after three days, the police came and seized the bike, but the seizure mahazar (Ex.P4) in respect to the recovery of the said bike was prepared on 25.08.2015. Further, during the time of trial, the prosecution filed CDR of mobile number 9445971189 (Ex.P12), which is not at all owned by the petitioner/A1. Further, the said document has been marked without getting any certificate, which is required under Section 65B of the Indian Evidence Act and therefore, the said Ex.P12, is an inadmissible document. According to him, no material is available to incriminate the petitioner/A1, in the alleged offence. The petitioner/A1 has been under incarceration from 30.11.2020. Therefore, the suspension of sentence will have to be granted.

7. Mr.R.Muniyapparaj, the learned Government Advocate (CrI. Side) appearing for the State submitted that the conviction has been rendered placing reliance upon the evidence given by the investigation officers. The evidence given by the investigation officers reveals the fact that the materials collected during the time of investigation create the circumstances to believe that the petitioner/A1 is involved in this occurrence. Thus, this petition requires to be dismissed.



8. Considering the submissions made, we are of the view that there are substantial issues to be considered in the appeal. Since the evidence given by the prosecution witnesses in respect to the mobile phone and also in respect to the marking of Ex.P12, a detailed appraisal is necessary. Since the entire case rests upon the circumstantial evidence, the same also needs a detailed appraisal. The fact that the petitioner was a drunkard and causing harassment to the deceased is also not in dispute and the trial Court has also taken note of the aforesaid fact.

9. Thus, considering the above facts, especially the period of incarceration, as aforesaid, we are inclined to suspend the sentence for the petitioner/A1.

10. Accordingly, sentence of imprisonment alone is suspended 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 learned Additional District Sessions Judge, Krishnagiri.
- (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/-
14/07/2021

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 ADDITIONAL DISTRICT SESSIONS JUDGE,
KRISHNAGIRI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, KRISHNAGIRI.

3 THE INSPECTOR OF POLICE,
SINGARAPETTAI POLICE STATION,
KRISHNAGIRI DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S. F.WELLINGTON Advocate on payment of necessary
charges

Order

in
CRL.MP.NO.876/2021
in
CRL.A.NO.37/2021

Date :14/07/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:16/07/2021