

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty First day of April Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.2328 of 2021

in Crl.A.No.323 of 2020

MUTHU

[PETITIONER]

Vs

STATE REP.BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
VIRUDHACHALAM POLICE STATION,
CUDDALORE DISTRICT.
CR.NO.253 OF 2017.

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence and grand bail to the petitioner/appellant for the conviction and sentence imposed in S.C.No.1 of 2018 dated 06.07.2020 on the file of the IIIrd Additional District and Sessions Judge, Cuddalore at Virudhachalam pending disposal of said Crl.A.No.323 of 2020.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.K.GANDHI KUMAR, Advocate for the petitioner and of MR. K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

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

This criminal miscellaneous petition has been filed seeking the relief to suspend the sentence of imprisonment imposed upon the petitioner by judgment and order dated 06.07.2020 in S.C.No.1 of 2016 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam.

2. The petitioner herein is arrayed as Accused No.3, in S.C.No.1 of 2016 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam. The trial Court by judgment dated 06.07.2020, convicted the petitioner for the offence under Section

302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

3. The case of the prosecution is that the deceased was administering the temple in which one Sankar, who is arrayed as the 1st accused in the said case, was working as a staff. There was a quarrel between parties with respect to the functioning of the employees including the said Sankar. During the time of occurrence, the petitioner along with two other accused by taking the key belonging to the temple from the possession of the deceased and by using the said key attacked the deceased on his head and also on various parts of the body. Ultimately, due to the attack made by the petitioner and two others, the deceased sustained grievous injuries and died instantly.

4. Mr.K.Gandhi Kumar, learned counsel appearing for the petitioner would submit that previously while at the time of passing order dated 27.11.2020 in CrI.M.P.No.5002 of 2020, the Division Bench of this Court suspended the sentence imposed upon the other two accused. Further, the overtact attributed against this petitioner is the same as to the overtact attributed against the other two accused. The learned counsel would further submit that during the relevant point of time in the occurrence, one of the accused also sustained injury and for which the wound certificate issued in respect of the said accused, has also been marked as exhibit. The learned trial judge without appreciating the said evidence, convicted this petitioner along with the other accused. He would further submit that there are material contradictions in the deposition of the eyewitnesses and the medical records marked. The witnesses say that the attack was on the left side, whereas the fatal injury was found on the right side. Further the earlier complaint in respect to the same occurrence lodged by the respondent police was burked. Thus, there are sufficient points available in the appeal and the sentence will have to be suspended for this petitioner also. According to him, the impugned judgment is erroneous and was pronounced in the light of bad evidence hidden with material contradictions and discrepancies.

5. Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the State submitted that there are eye witnesses who deposed and apart from the same, CCTV footage has also been marked. The trial Court considered this aspect while rendering conviction. More than that, the present petitioner is having nine previous cases and all the said cases are registered for heinous crime. Hence, in respect to this petitioner, if the sentence is suspended, he would likely commit the same offence and create an unpleasant situation among the public, who are all residing in the said locality.

6. This Court carefully perused the judgment of the trial Court. We find that the issues on fact and law to be argued in the appeal are available in this case. Only by considering the same, this Court allowed the petition filed by the other two accused, which is also for suspending the sentence imposed upon them. But the case of the petitioner herein is entirely a different one. It is not disputed on the side of the petitioner that two other accused already granted an order of suspension, are not having any previous cases. But the petitioner herein is having the following nine cases.

Sl.No.	Cr.No.	Offence under Sections	Stage of the case
1	Vridhachalam P.S. Cr.No.423/12	147, 148, 294, 324, 506(ii) IPC	Acquitted u/s 248 (1) Cr.P.C. dt. 20.10.14 JM-I Court, Vridhachalam.
2	Vridhachalam P.S. Cr.No.703/12	294, 323 and 379 IPC @ 341, 294(b), 352 IPC	Acquitted u/s.256(1) Cr.P.C. dt. 12.09.17 JM-I Court, Vridhachalam
3	Vridhachalam P.S. Cr.No.812/12	147, 341, 342, 323, 506(ii), 376 IPC r/w 3 (i), (x), 3(ii) (v) of SC/ST Act, 1989	PT
4	Vridhachalam P.S. Cr.No.304/14	392, 397 IPC	PT
5	Vridhachalam P.S. Cr.No.463/15	147, 148, 294(b), 506 (ii) IPC Sec.3(1)(V) (S), 3(2)V(a) SC/ST Act @ 294(b), 506(2) IPC r/w 3(1)(V) (S). 3(2)V(a) SC/ST Act.	Acquittal u/s.235(1) Cr.P.C. dt.15.10.19 by Sessions Court, Cuddalore.
6	Vridhachalam P.S. Cr.No.466/16	151 Cr.P.C r/w 7(1) CLA Act	PT
7	Vridhachalam P.S. Cr.No.253/17	342, 352, 506(11) & 302 IPC	This case was conviction on 06.07.2020 by ADJ Court Vridhachalam (Life & Rs.1,000-)
8	Aladi P.S. Cr.No.175/17	392, 397 IPC	PT
9	Muthandikuppam P.S. Cr.No.47/12	399 IPC	PT

Further, the petitioner herein is an history sheet rowdy in Sl.No.2 of 2019. Apart from that previously he has been detained under the Goondas Act, twice, in the following two references

1. C1/DO/02/13 TPDA No.2661/13 Dt. 09.01.13 -
Cr.No.812/12

2. C.No.C3/28/15 TPDA No.2838/15 Dt. 24.06.15 -
Cr.No.463/15

7. So, number of cases pending against the petitioner would clearly establish the fact that the petitioner is not having any good conduct. Since the petitioner was convicted for the offence under Section 302 IPC, we are of the considered opinion that the previous antecedents has also to be taken into account for considering this petition. Accordingly, we are of the opinion that if such type of petitioners are released on bail and also the sentence is suspended, they may likely involve in some other cases and create an unpleasant situation among the public.

In the result, for the reasons stated supra, this criminal miscellaneous petition is dismissed. The Registry is directed to call for the records, prepare the typed set of papers immediately and list the main appeal for final hearing.

-sd/-

21/04/2021

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 III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CUDDALORE AT
VIRUDHACHALAM

2 THE INSPECTOR OF POLICE,
VIRUDHACHALAM POLICE STATION,
CUDDALORE DISTRICT.

3 THE SUPERINTENDENT OF
CENTRAL PRISON, CUDDALORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT,
MADRAS.

C.C. to M/S.K.GANDHI KUMAR Advocate on payment of necessary
charges

Order

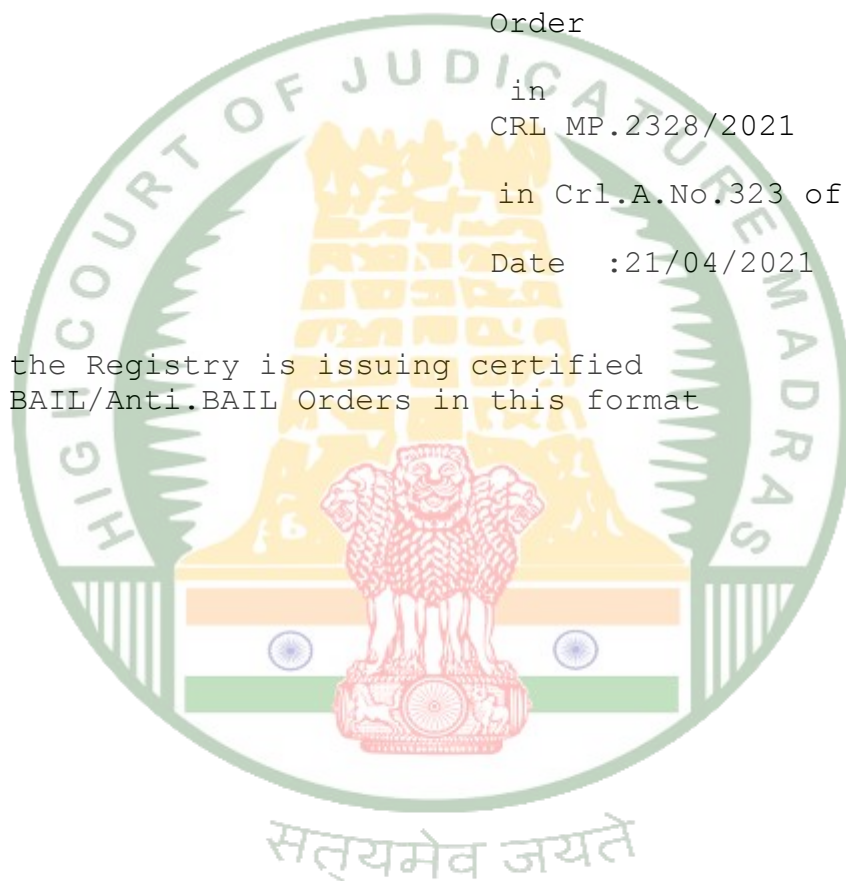
in
CRL MP.2328/2021

in Crl.A.No.323 of 2020

Date :21/04/2021

From 7.2.2001 the Registry is issuing certified
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RVR 23/04/2021



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