

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.4385 OF 2021

IN CRL.A.NO.592 OF 2019

1 MARAPPAN
2 SIVAKUMAR

[PETITIONERS / APPELLANTS]

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
NAMAGIRIPET POLICE STATION,
NAMAKKAL DISTRICT.
(CRIME NO.112 OF 2016)

[RESPONDENT / COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.592/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioners / appellants in S.C.No.30 of 2017 on the file of Additional District Court, Namakkal and direct the release of petitioners / appellants on bail from their confinement at Central Prison at Coimbatore on such terms and conditions that may be imposed by this Hon'ble Court pending decision in Crl.A.No.592 of 2019 [IN CRL.MP.NO.4385 OF 2021]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.592/2019 on the file of the High Court and upon hearing the arguments of M/S.N.A.RAVINDRAN, 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 to suspend the sentence of imprisonment imposed on the petitioners (Accused 1 and 2) by judgment and order dated 18.07.2019 passed in S.C.No.30 of 2017 on the file of the Additional Sessions Court, Namakkal.

2. It is the case of the prosecution that during the time of occurrence, the 1st petitioner viz., Marappan being the 1st accused along with the 2nd petitioner viz., Sivakumar, who is arrayed as 2nd accused in S.C.No.30 of 2017, on the file of the learned Additional Sessions Judge, Namakkal, due to previous enmity, criminally trespassed into the agricultural land of the deceased persons and came in front of the house of the deceased persons with common intention to eliminate the family members of the deceased No.1 viz., Ayyavu @ Periannan. In the course of same transaction, by using an iron instrument attached with long wooden handle, the 1st petitioner/A1 stabbed the deceased No.1 viz., Ayyavu @ Periannan on his lower chest and consequentially, Ayyavu @ Periannan died.

3. Further, in the course of same transaction, the petitioners/A1 & A2, sprayed injurious liquid containing mixture of water, chilli powder, cow-dung powder and small pieces of mirror glass on the face of deceased No.2 viz., Sivakumar and consequentially, caused cut injuries on many vital parts of the body of the deceased No.2 viz., Sivakumar, by using a long sword and resultantly, the said Sivakumar, also died. More than that, during the relevant point of time, both the accused attempted to kill one Marayee, who is the wife of the deceased No.1 viz., Ayyavu @ Periannan.

4. Mrs.R.S.Indira, learned counsel for the petitioners would submit that the impugned judgment is erroneous and was pronounced in the light of bad evidence hidden with material contradictions and discrepancies and the petitioners have been incarcerated for more than two years.

5. Per contra, Mr.K.Prabhakar, learned Additional Public Prosecutor would point out that the evidence given by PW1 is very clear that when at the time of occurrence, the petitioners herein have unlawfully trespassed into the occurrence place and committed this offence. He would further submit that the offence committed by the petitioners, is a serious one, involving double murder and if the sentence awarded by the trial Court is suspended, there may be a chance for absconding.

6. This Court carefully perused the judgment of the trial Court. Though PW4, who is alleged to be the eye witness to the occurrence, had not supported the case of the prosecution, the evidence of PW1-Tmt.Lavanya, is in support of the case of the prosecution. In her evidence, she has narrated the occurrence in support of the prosecution and identified the accused. The evidence given by PW1, is corroborated through the evidences given by PW2 and PW3. Therefore, it cannot be said that the eye witnesses examined on the side of the prosecution, have not supported the case of the prosecution. The learned trial Judge had convicted the petitioners by believing the evidence of PW1 and PW3. Further, the evidence given by PW1 and PW2, is substantiated through the material objects, which were marked as M.O.19 to 21.

7. In such view of the matter, especially by considering the gravity of the offence alleged to be committed by the petitioners, this is not a fit case to suspend the sentence of imprisonment and grant bail to the petitioners.

In the result, 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 in the month of July 2021.

-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 ADDITIONAL SESSIONS JUDGE,
NAMAKKAL.

2 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, COIMBATORE.

3 THE INSPECTOR OF POLICE,
NAMAGIRIPET POLICE STATION,
NAMAKKAL DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.N.A.RAVINDRAN Advocate on payment of necessary charges

Order

in
CRL.MP.NO.4385/2021

in
CRL.A.NO.592/2019

Date :21/04/2021

From 7.2.2001 the Registry is issuing certified
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21/04/2021