

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.2973 of 2021

in Crl.A.No.116 of 2021

Govindan @ Govindaraj

.. Petitioner/sole accused
Vs.

State through its
Inspector of Police,
Attaiyampatti Police Station,
Salem District.
(Crime No.291 of 2017)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C. Read with Section 439 Cr.P.C., to suspend the sentence imposed upon the petitioner by judgment and order dated 13.12.2019 passed in S.C.No.147 of 2018 on the file of the learned III Additional District and Sessions Judge, Salem and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.A.Abdul Lathif

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

ORDER

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

This criminal miscellaneous petition has been preferred by the accused seeking to suspend the sentence imposed upon him, by judgment and order dated 13.12.2019 passed in S.C.No.147 of 2018 on the file of the learned III Additional District and Sessions Judge, Salem and to enlarge him on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in S.C.No.147 of 2018 on the file of the learned III Additional District and Sessions Judge, Salem, was convicted of the offence under Sections 394 and 302 IPC and sentenced as follows:

Offence	Sentence
394 IPC	Life imprisonment along with fine of Rs.1,000/-, in default, rigorous imprisonment for three months.
302 IPC	Life imprisonment along with fine of Rs.1,000/-, in default, rigorous imprisonment for three months.

3. Challenging the above conviction and sentence, the petitioner/accused has filed CrI.A.No.116 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.A.Abdul Lathif, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. It is the case of the prosecution that the petitioner/accused and the deceased Mr.Sekar are known to each other. The petitioner/accused was working in a Power Loom, at the time of occurrence. The deceased was a Transgender and he used to have homosex with the petitioner/accused. On 29.07.2017 at midnight 12, the petitioner/accused called the deceased for homosex. Later, both went to the Attayampatty graveyard and had sex after consuming liquor. During such time, the petitioner/accused demanded the deceased to pay some money, for which, the deceased refused to pay the same. Aggrieved over the same, the petitioner/accused hit the deceased on his left side eyebrow with a stone and later, he forcibly took away Rs.300/- from the deceased and further, annoyed by the act of the deceased, the petitioner/accused pushed down the deceased, covered his mouth with a slipper and tied the same with a towel. Thereafter, he threw a big stone on his head twice and thereby, caused the death of the deceased. Thus, the petitioner/accused committed the offence punishable under Section 394 and 302 IPC.

6. The learned counsel for the petitioner/accused would contend that the petitioner is in judicial custody from the date of judgment i.e. 13.12.2019. Before the occurrence, the petitioner/accused did not have any intention or motive to kill the deceased. Only due to the development of a wordy quarrel, the offence had happened. During the time of trial, the petitioner/accused regularly appeared before the trial Court and co-operated for the completion of the trial proceedings and therefore, he prayed to allow this petition seeking suspension of sentence to the petitioner/accused.

7. Per contra, the learned Government Advocate (CrI. Side) appearing for the respondent/State would contend that the petitioner/accused is not having substantial points for allowing the appeal. According to him, the findings arrived at by the trial Court are found correct and in otherwise, he seriously opposed this petition.

8. Now, on considering the said submissions with the relevant records, it seems that before the trial Court, no eyewitnesses have been examined on the side of the prosecution. The case of the prosecution rests upon the extra judicial confession recorded by PW11, the Village Administrative Officer. Since the validity of the said confession is strongly denied by the petitioner/accused, the same needs a detailed appraisal. Further, since the alleged occurrence had happened due to the development of a wordy quarrel, the evidence in respect of the same also needs a detailed appraisal, to find out whether the petitioner/accused is having the motive, at the time of occurrence.

9. Moreover, the petitioner/accused has been in incarceration from 13.12.2019. 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/accused is entitled to the relief of suspension of sentence and bail.

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 III Additional District and Sessions Judge, Salem.

(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/-

24/06/2021

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,
SALEM.

2 THE INSPECTOR OF POLICE,
ATTAIYAMPATTI POLICE STATION,
SALEM DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.A.ABDUL LATHIF Advocate on payment of necessary
charges

Order

in
CRL MP.2973/2021

in
CRL A.116/2021

Date :24/06/2021

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

सत्यमेव जयते

WEB COPY

MN-29/06/2021