

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.2426 of 2021

in Crl.A.No.97 of 2021

Thirunavukkarasu

.. Petitioner/sole accused

Vs.

State through its  
Inspector of Police,  
Pallipalayam Police Station,  
Namakkal District.  
(Crime No.815 of 2017)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 374(2) of Cr.P.C., to suspend the sentence imposed upon the petitioner by judgment and order dated 17.12.2019 passed in S.C.No.214 of 2018 on the file of the learned Principal Sessions Judge, Namakkal and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.A.Saravanan

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 17.12.2019 passed in S.C.No.214 of 2018 on the file of the learned Principal Sessions Judge, Namakkal and to enlarge him on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in S.C.No.214 of 2018 on the file of the learned Principal Sessions Judge, Namakkal, was convicted of the offence under Section 302 IPC and sentenced to undergo Life

imprisonment along with fine of Rs.1,000/-, in default, simple imprisonment for four years.

3. Challenging the above conviction and sentence, the petitioner/accused has filed CrI.A.No.97 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

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

5. The case of the prosecution is that on 23.12.2017, near to the Auto stand, on the junction at Pallipalayam Sankakiri Road, the petitioner/accused, caught hold of the tuft of the deceased Venkatachalam and hit the same on the floor and also stabbed the face and cheek of the deceased with metal chisel (உளி), with the intention of causing death of the deceased Venkatachalam and due to the same, the said Venkatachalam died. Thus, the petitioner/accused committed the offence punishable under Section 302 IPC.

6. The learned counsel appearing for the petitioner/accused would contend that the case of the prosecution rests upon three circumstances viz., 1) Extra Judicial Confession (2) Arrest and recovery and (3) Last Seen Theory. According to him, before the trial Court, the witnesses examined on the side of the prosecution for proving the above said factors did not support the case of the prosecution and therefore, the petitioner/accused is having substantial grounds for allowing the appeal. Hence, 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 submit that though some of the witnesses have not supported the case of the prosecution, their cross examination is very clear for proving the circumstances in which, the alleged occurrence had happened. According to him, if the petitioner/accused is released on bail, he may attempt to abscond and therefore, he opposed this petition.

8. Now, on considering the rival submissions made by the learned counsel appearing on either side along with the relevant records, it is true, the prosecution has projected the case upon the circumstantial evidence. Primarily, in respect to the last seen theory, PW9 has deposed in his evidence as previous to the occurrence, he saw the accused in the Auto stand. In respect to the presence of deceased at that time, the evidence given by him needs a detailed appraisal. Further, in order to prove the arrest, confession and recovery, PW8, Village Administrative Officer, gave evidence in support of the prosecution. His evidence also needs appraisal in respect to his signature found in the confession statement. More than that, to prove the motivation, the evidence projected by the prosecution also needs a detailed appraisal.

9. Moreover, the petitioner/accused has been in incarceration from 17.12.2019. 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 Principal Sessions Judge, Namakkal.

(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/-  
07/07/2021

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.

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TO

1 THE PRINCIPAL SESSIONS JUDGE,  
NAMAKKAL.

2 THE INSPECTOR OF POLICE,  
PALLIPALAYAM POLICE STATION,  
NAMAKKAL DISTRICT.

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE.

+1 C.C. to M/S.A.SARAVANAN Advocate on payment of necessary charges  
SR.NO.7124

Order

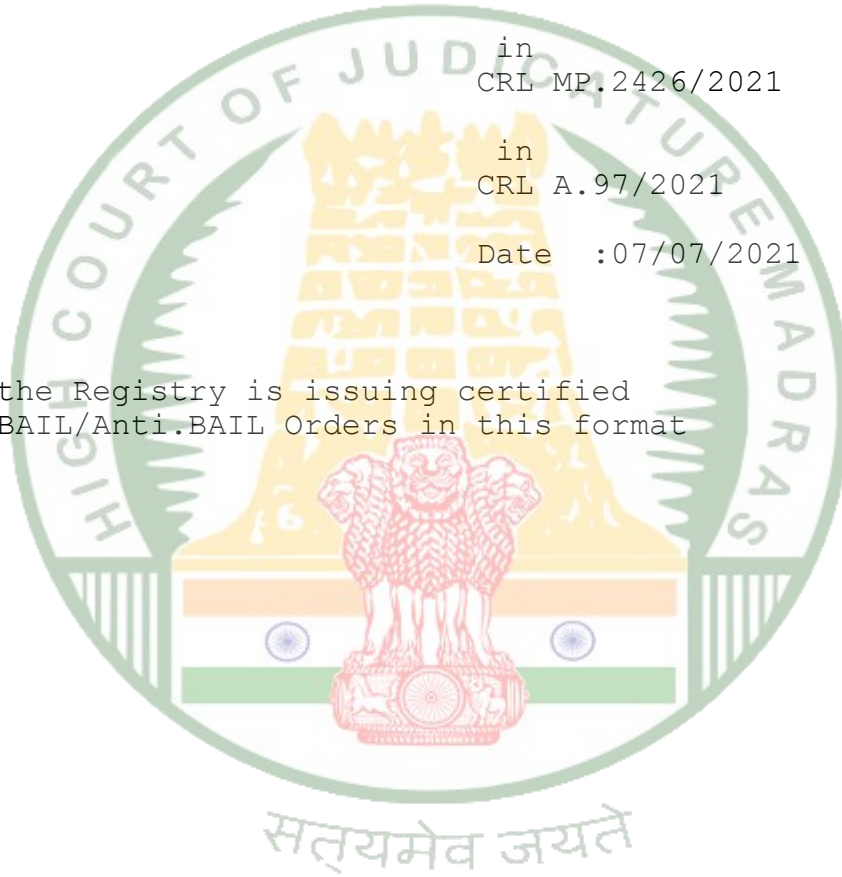
in  
CRL MP.2426/2021

in  
CRL A.97/2021

Date :07/07/2021

From 7.2.2001 the Registry is issuing certified  
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MN-08/07/2021



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