

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 17.03.2021

CORAM

THE HON'BLE MR. JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.3004 of 2020

in Crl.A.No.157 of 2020

T.Manikandan

... Petitioner/Accused No.1

Vs.

State represented by
The Inspector of Police,
Komangalam Police Station
Coimbatore.

(Crime No.77 of 2013)

... Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) r/w 439 of Cr.P.C. to suspend the conviction imposed in S.C.No.114 of 2015 dated 08.01.2020 on the file of the learned IV Additional Sessions Judge, Coimbatore and enlarge him on bail, pending disposal of the Criminal Appeal.

For Petitioner : Mr.V.Purushothaman

For Respondent : Mr.K.Prabakar

Additional Public Prosecutor

O R D E R

This criminal miscellaneous petition has been preferred to suspend the sentence imposed on the petitioner in S.C.No.114 of 2015 on the file of the learned IV Additional Sessions Court, Coimbatore, (hereinafter referred to as "the trial Court") and enlarge him on bail, pending disposal of the Criminal Appeal.

2.The petitioner, who was A1 in S.C.No.114 of 2015 before the trial Court, was convicted and sentenced as follows on 08.01.2020:

Provision under which convicted	Sentence
Section 302 of IPC	Life imprisonment and fine of Rs.10,000/-, in default one year rigorous imprisonment.

3.Challenging the above conviction and sentence, the petitioner has filed the Appeal in Crl.A.No.157 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.Heard Mr.V.Purushothaman, learned counsel for the petitioner and Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the petitioner submitted that the 1st accused-Manikandan and 2nd accused-Sathya, loved each other, but the said-Sathya was engaged to marry the deceased-Anandakuttan; therefore, the petitioner(A1) and Sathya (A2) conspired with each other to murder the deceased-Anandakuttan; on 25.04.2013, with the help of other accused persons, they kidnapped the deceased and murdered him and made the scene as if the deceased died due to a road accident; therefore, all the accused were prosecuted and except A1, remaining accused persons were acquitted from the charges levelled against them; further, the trial Court disbelieved the prosecution evidence with regard to other accused persons and acquitted them; the same benefit ought to have been granted to the 1st accused also; further the trial Court failed to consider the fact that there is no eye witness and P.Ws.1, 2 and 3 did not support the prosecution case; the trial Court relied upon the extra judicial confession of the petitioner herein and convicted him; however, the extra judicial confession with regard to A2, A3 and A4 were disbelieved and no prima facie case has been made out as against the petitioner and therefore, the sentence slapped on the petitioner may be suspended and the petitioner released on bail.

6.The learned Additional Public Prosecutor appearing for the respondent opposed to suspend the sentence, on the ground that there is a prima facie case against the petitioner and contended that the prosecution proved the charge against the petitioner; further the extra judicial confession given by the petitioner and the materials recovered connect him with the crime and hence, this petition is liable to be dismissed.

7.We have considered the submissions of the learned counsel for the parties and perused the materials on record.

8.On a perusal of the records, it is seen that the petitioner and the 2nd accused loved each other. In the meantime, the 2nd accused got engaged with the deceased-Anandakuttan. In order to eliminate the deceased, the accused persons decided to murder Anandakuttan and on 25.04.2013, according to the prosecution, the 2nd accused brought the deceased and introduced him to the petitioner, who in turn took the deceased in an auto along with other accused persons and murdered him by attacking with an iron rod. Thereafter, they took the body in the auto and threw it near Munduvelampatti Village and also made it appear as if the deceased died due to a road accident. Further on verification of case records, it revealed that all the accused persons gave their extra judicial confession and the trial Court, disbelieving the extra judicial confession of A2 to A4,

acquitted them from the charges and convicted the petitioner alone. Under such circumstances, we find that there is an arguable case in favour of the petitioner.

9. With regard to suspend the sentence, the following observation of the Supreme Court in *Kashmira Singh Vs. State of Punjab* [AIR 1977 SC 2147] has to be considered at this stage:

"Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the

accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and- sentence.'

10.The petitioner has raised substantial grounds in the appeal which require detailed appraisal. Further, the appeal is not likely to be taken up in the near future. Considering the nature of the offence, the circumstances in which the occurrence took place and the fact that the petitioner has been in incarceration from 08.01.2020, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail pending appeal.

11.Accordingly, the relief of suspension of sentence 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 trial Court.
- (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/-

17/03/2021

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 IV ADDITIONAL SESSIONS JUDGE,
COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KOMANGALAM POLICE STATION,
COIMBATORE.

+1C.C. to M/S.V.PURUSHOTHAMAN Advocate on payment of necessary
charges SR NO.3511

Order

in

CRL.MP.NO.3004/2020

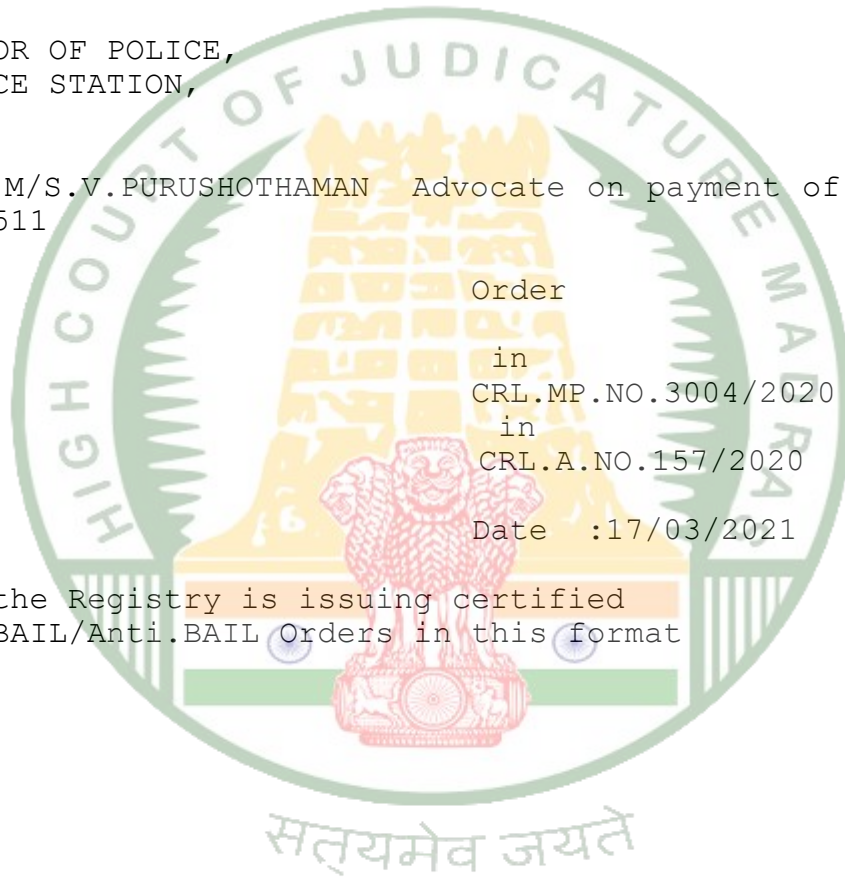
in

CRL.A.NO.157/2020

Date :17/03/2021

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

MK:18/03/2021



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