

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.M.P.No.4205 of 2021

in

CrI.A.No.146 of 2021

1. Nallusamy
2. Palaniappan

... Petitioners/accused

Vs

State through its
Inspector of Police,
Nallur Police Station,
Namakkal District.
(Crime No.364 of 2009)

... 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 16.02.2021 passed in S.C.No.15 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioners : Mr.Camyles Gandhi

For Respondent : Mr.R.Muniyapparaj
Government Advocate (CrI.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 them, by judgment and order dated 16.02.2021 passed in S.C.No.15 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal and to enlarge them on bail pending disposal of the appeal.

2. The petitioners, who are the accused in S.C.No.15 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, were convicted and sentenced to undergo Life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment, each.

3. Challenging the above conviction and sentence, the petitioners/accused have filed CrI.A.No.146 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.Camyles Gandhi, learned counsel for the petitioners and Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. It is the case of the prosecution that the petitioners/accused 1 and 2, are the son and father, respectively. The deceased Amaravathi is the wife of the 1st petitioner/1st accused. After the solemnization of marriage, on account of marital discord, the deceased went to her parental home and thereafter, the 1st accused went there and gave mental torture to the deceased. On 03.10.2009, the parents of the deceased, after making compromise, brought their daughter to the Dhasampalayam, wherein the petitioners were residing and left her in the place of the petitioners/accused. Thereafter, both the accused had often scolded her and abused her. Unable to bear the harassment, the said Amaravathi poured kerosene on her body and set fire to herself on 03.10.2009, at about 1.00 pm and died at the Government Hospital, Erode on 11.10.2009 at about 3.00 am. Thus, the petitioners/accused committed the offence punishable under Section 302 IPC.

6. The learned counsel for the petitioners/accused would contend that the averments found in the FIR, are entirely different from the averments found in the dying declaration, which was recorded by the Judicial Officer. The learned trial Judge, without considering those aspects, convicted the petitioners/accused. According to him, the petitioners/accused are having substantial grounds for getting an order of acquittal. With the above submissions, he prayed to allow this petition seeking suspension of sentence to the petitioners/accused.

7. Per contra, the learned Government Advocate (CrI. Side) appearing for the respondent/State would contend that before the trial Court, the learned trial Judge had considered the evidences produced on the side of the prosecution in a proper perspective, and then only came to the conclusion that the petitioners/accused are guilty under Section 302 IPC. According to him, interference is not necessary in the judgment rendered by the trial Court. Further, he strongly opposed for allowing this petition.

8. Now, on considering the submissions made by the learned counsel appearing on either side, it is true, in the alleged complaint, the deceased had stated that during the time of occurrence, she immolated herself and on the other hand, in the dying declaration recorded by the learned Magistrate, she has stated that both the accused had poured kerosene on her

and set fire. Therefore, the contradiction in respect to the said averments needs a detailed appraisal. Accordingly, the petitioners / accused have raised substantial grounds in the appeal which require a detailed appraisal.

9. Moreover, the petitioners/accused has been in incarceration from 16.02.2021. 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 petitioners/accused are entitled to the relief of suspension of sentence and bail.

10. Accordingly, sentence of imprisonment alone is suspended and bail is granted to the petitioners on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/-, each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, 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 petitioners shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioners 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 they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.

-sd/-

23/06/2021

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 SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
NAMAKKAL

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE INSPECTOR OF POLICE,
NALLUR POLICES TATION,
NAMAKKAL DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.S.N.ARUNKUMAR Advocate on payment of necessary
charges Sr.6720

Order
in

Crl.M.P.No.4205 of 2021

in

Crl.A.No.146 of 2021

Date :23/06/2021

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RVR 25/06/2021

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