

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.5126 of 2021

in

Crl.A.No.183 of 2021

Mathiyazhagan

.. Petitioner/sole accused

Vs.

State through its
Inspector of Police L&O,
Ponnur Police Station,
Thiruvannamalai District.
(Crime No.103 of 2001)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C., to suspend the sentence imposed on the petitioner by judgment and order dated 20.02.2019 passed in S.C.No.61 of 2009 on the file of the learned Additional District and Sessions Judge [FTC], Aarani and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.Ilayaraja Kandasamy

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

O R D E R

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

This criminal miscellaneous petition has been preferred, seeking to suspend the sentence imposed on the petitioner, by judgment and order dated 20.02.2019 passed in S.C.No.61 of 2009 on the file of the learned Additional District and Sessions Judge [FTC], Aarani and to enlarge the petitioner on bail, pending disposal of the appeal.

2. The case of the prosecution is that on 26.11.2001, at about 6.45pm, in Solaputhur Village, while at the time the deceased Gangadurai is sitting in the pyol (தீண்டண) of the house, which belongs to one Veerasamy, the petitioner/accused with an intention to kill

the said Gangaduri, went to the house of Veerasamy with bill hook machete (கொடுவா கத்தி) and thereafter, by saying "இதோடு செத்துபோடா" assaulted the deceased Gangaduri on the back side of the neck as well as on his face. Due to the attack made by the petitioner/accused, the deceased Gangadurai sustained fatal injury and resultantly, he died. For the said occurrence, a case has been registered against the petitioner/accused in Cr.No.103 of 2001 on the file of the Ponnur Police Station under Section 302 of IPC.

3. After concluding the trial, the learned Additional District and Sessions Judge [FTC], Aarani, came to the conclusion that the petitioner/accused is found guilty for the offence under Section 302 IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to under simple imprisonment for six months.

4. Challenging the above conviction and sentence, the petitioner/Accused, has filed Crl.A.No.183 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

5. Heard Mr.Ilayaraja Kandasamy, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side) appearing for the respondent/State.

6. Mr.Ilayaraja Kandasamy, learned counsel appearing for the petitioner/accused would contend that the evidence of PW1 to PW3 are highly unbelievable and contradictory in nature. In respect to the place of occurrence and manner of attack, the evidence given by PW1 to PW3, are unbelievable one. The witnesses examined on the side of the prosecution in respect to the recovery of material object, gave a self contradictory evidence. According to him, without considering the evidences which are available in the cross examination of prosecution witnesses, the trial Court convicted the petitioner/accused as above.

7. Mr.R.Muniyapparaj, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the minor contradictions, which are available in the evidences given by the prosecution witnesses, are all not material to consider the case of prosecution. According to him, interference of this Court is not at all necessary in the findings rendered by the trial Court.

8. The rival submissions made by the learned counsel on either side are considered.

9. Before the trial Court, in order to prove the occurrence, three eye witnesses have been examined as PW1 to PW3. Now, on going through the entire evidence given by PW1 to PW3, the same requires a detailed appraisal, in respect to the number of persons, who are all

present in the occurrence place. Further, it is also necessary to appraise the evidence in respect to the place in which the deceased was present during the time of occurrence and the evidence in respect to recovery of material objects, also needs a detailed appraisal. Moreover, the petitioner/accused, has been under incarceration from 20.02.2019 onwards and the present appeal is not likely to be taken up in the near future.

10. Thus, in the light of the above, coupled with the period of incarceration, we are inclined to suspend the sentence of imprisonment imposed upon the petitioner/accused.

11. 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 Additional District and Sessions Judge [FTC], Aarani.
- (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/-

21/06/2021

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 ADDITIONAL DISTRICT SESSIONS JUDGE (FTC),
AARANI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE L AND O,
PONNUR POLICE STATION,
THIRUVANNAMALAI DISTRICT.

C.C. to M/S.ILAYARAJA KANDASAMY Advocate on payment of necessary
charges

Order

in
CRL MP.5126/2021

in
CRL.A.183/2021

Date :21/06/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cs 22/06/2021

सत्यमेव जयते

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