



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Friday, the Twenty Seventh day of August Two Thousand Twenty One

WEB COPY

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Ms Justice R.N. MANJULA

CRIMINAL MISCELLANEOUS PETITION No.5483 of 2021

IN CRL A.211/2021

MANSOOR AHMAD

[APPELLANT / ACCUSED NO.2]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
BHAVANI POLICE STATION,
ERODE DISTRICT
(CRIME NO.465/2009)

[RESPONDENT / COMPLAINANT]

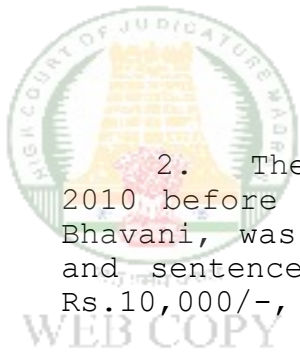
Petition praying that in the circumstances stated therein the High Court will be pleased to

(i) Suspend the Sentence of Imprisonment imposed by the IV Additional District and Sessions Judge, Erode at Bhavani in S.C.No.164 of 2010 by the Judgement dated 11.03.2021 and enlarge the petitioner/Appellant on bail, pending disposal of the above said Crl.A.No.211 of 2021.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.K.P.SURESH KUMAR, Advocate for the petitioner and of M/S.M.BABU MUTHU MEERAN, Additional Public prosecutor, on behalf of the Respondent the court made the following order:-

(Made by P.N.PRAKASH, J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 11.03.2021 passed in S.C.No.164 of 2010 on the file of the IV Additional District and Sessions Court, Erode at Bhavani and to enlarge the petitioner on bail pending disposal of the above appeal.



2. The petitioner, who was the second accused in S.C.No.164 of 2010 before the IV Additional District and Sessions Court, Erode at Bhavani, was convicted of the offence under Section 302 r/w 109 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months rigorous imprisonment.

3. Challenging the aforesaid conviction and sentence, the petitioner (A2) has filed Crl.A.No.211 of 2021 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.K.P.Suresh Kumar, learned counsel for the petitioner (A2) and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.

5. In this case, originally four accused viz., Prabhu (A1), Mansoor Ahmad (A2), petitioner herein, Revathi (A3) and Sasikala (A4) were tried and the trial Court had acquitted Revathi (A3) and Sasikala (A4).

6. It is the case of the prosecution that Prabhu (A1) and the petitioner (A2) had attacked the deceased Shanmugam by throwing acid on him on 14.06.2009 around 8.30 p.m., which proved fatal.

7. The learned counsel for the petitioner (A2) made the following submissions:

- i. even according to the prosecution, it was a case of mistaken identity and therefore, Section 302 IPC cannot be attracted;
- ii. Shanmugam had written in a paper the word "Apollo" and had given it to his wife, on which, the police had not conducted any investigation;
- iii. there are discrepancies in the evidences of Vadivel (PW3) and Mahalingam (PW5) and both of them have not identified the actual assailant;
- iv. the extrajudicial confession of the petitioner (A2) to Muthusamy (PW8), Village Administrative Officer (VAO), deserves to be rejected, as even according to Muthusamy (PW8), VAO, his office is located next to the police station;
- v. there are contradictions between the evidences of Dr.Poornachandrika (PW12) and Dr.Jagadeesan (PW13), who had given medical treatment to the petitioner (A2).

8. Per contra, the learned Additional Public Prosecutor refuted the aforesaid submissions made by the learned counsel for the petitioner (A2).



9. This Court gave its anxious consideration to the rival submissions.

10. It is the case of the prosecution that Prabhu (A1) and the petitioner (A2) are good friends; Prabhu (A1) and Revathi (A3) were having an affair, but Revathi (A3) was courted by Senthil Kumar, who was running Deepa Medical Shop; when Prabhu (A1) asked Revathi (A3) about her questionable activities, the latter is said to have told Prabhu (A1) that one Shanmugam, owner of Kamatchi Medical Shop, was courting her and therefore, to wreak vengeance, Prabhu (A1) and the petitioner (A2) attacked Shanmugam with acid and caused his death.

11. In this case, the extrajudicial confession of the petitioner (A2) to Muthusamy (PW8), VAO, clearly sets out the game plan of the accused and also the manner, in which, Shanmugam was murdered. This is not a case of mistaken identity, rather a case, in which, Revathi (A3), who wanted to conceal her affair with Senthil Kumar, owner of Deepa Medical Shop, had told that Shanmugam, owner of Kamatchi Medical Shop, was courting her. Therefore, Prabhu (A1) and the petitioner (A2) targeted Shanmugam, who was the owner of Kamatchi Medical Shop and committed the dastardly act of throwing acid on him and murdering him.

12. Whether the extrajudicial confession should be accepted or not is an aspect, which can be seen only during the final hearing of the case and not in this bail petition. Similarly, the discrepancies and the contradictions in the evidences of various witnesses that were pointed out by the learned counsel for the petitioner cannot be considered in this petition.

13. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)¹, has considered Kashmira Singh v. State of Punjab² and has held as follows:

"30. . . . In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

In view of the above reasoning, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this criminal miscellaneous petition stands dismissed at this juncture.

-sd/-
27/08/2021

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 DISTRICT ANZD SESSIONS JUDGE,
ERODE AT BHAVANI.

2 THE INSPECTOR OF POLICE,
BHAVANI POLICE STATION,
ERODE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.



C.C. to M/S.K.P.SURESH KUMAR
charges

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Advocate on payment of necessary
Order

in
CRL MP.5483/2021

in
CRL A.211/2021

Date :27/08/2021

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JPA 02/09/2021