



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

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

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PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Ms Justice R.N. MANJULA

CRIMINAL MISCELLANEOUS PETITION No.6579 of 2021

IN CRL A.324/2021

1 ANTHONY
2 KRISHNAN

[PETITIONERS/ACCUSED]

Vs

THE STATE REP.BY
INSPECTOR OF POLICE, (L AND O),
H3, TONDIARPET POLICE STATION,
CHENNAI - 81.
(CRIME NO.316 OF 2013)

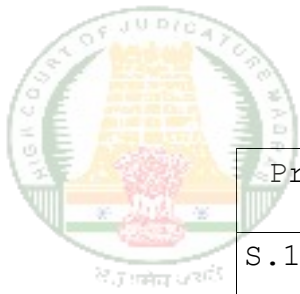
[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.324/2021 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.49 of 2017 dated 29.01.2021 passed by the VI Additional Sessions Judge, Chennai and enlarge the petitioners on bail, pending disposal of the above CRL A.324/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.324/2021 on the file of the High Court and upon hearing the arguments of M/S. R.SANKARASUBBU, Advocate for the petitioners and of M/S R.MUNIYAPPARAJ, GOVT.ADVOCATE (CRL.SIDE) on behalf of the Respondent the court made the following order:-

This is an application seeking suspension of sentence and bail.

2 The petitioners, viz., Anthony (A.6) and Krishnan (A.7), along with five others, faced a prosecution in S.C. No.49 of 2017 in the Court of the VI Additional Sessions Judge, Chennai and vide judgment and order dated 29.01.2021, have been convicted and sentenced as under:



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Provision under which convicted	Sentence
S.148 r/w S.149 IPC	3 years rigorous imprisonment
S.450 r/w S.149 IPC	10 years rigorous imprisonment and fine of Rs.5,000/-
S.302 r/w S. 149 IPC	Life imprisonment and fine of Rs.5,000/-
S.506(II) IPC r/w S.149 IPC	7 years rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

3 Challenging the aforesaid conviction and sentences, the petitioners have preferred an appeal in CrI.A. No.324 of 2021 along with the instant application seeking suspension of sentence and bail.

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

5 Mr. Sankarasubbu took this Court through paragraph 25 of the judgment of the trial Court and submitted that the trial Court has given a finding that the petitioners were not present at the place of occurrence unlike the co-accused and therefore, the petitioners are entitled to the relief of sentence suspension and bail.

6 It is the case of the prosecution that on 12.05.2013, around 7.00 p.m., a motorcyclist had accidentally hit the son of Krishnan (A.7); taking advantage of that, Anthony (A.6) and Krishnan (A.7) were trying to extract money from the motorcyclist; at that time, the deceased Senthil intervened, pacified both sides and let the motor cycle rider off; on account of this, a quarrel ensued between Senthil and the petitioners herein; based on the complaint given by Krishnan (A.7), the police registered a case in Cr.No.314 of 2013 under Section 75 of the City Police Act against Senthil. It is alleged that even in the police station, all the accused, including Anthony (A.6) and Krishnan (A.7), the petitioners herein, threatened Senthil in the presence of his father Arumugam that they will do away with him that night itself and accordingly, on the same night, Senthil was brutally attacked and murdered.

7 The prosecution case rests on the evidence of Dayalan (P.W.1) and Anjali (P.W.2), parents of Senthil. The main contention of Mr. Sankarasubbu is that the petitioners were not actually seen by the witnesses at the time of attack. But, a reading of the judgment of the trial Court shows that Senthil was attacked and murdered by the gang right in the presence of his parents who were



examined as P.W.1 and P.W.2. Further, the proved facts show that the quarrel by Anthony (A.6) and Krishnan (A.7) with Senthil and his murder had taken place in quick succession.

8 At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), has considered Kashmira Singh v. State of Punjab 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 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 petitioners and accordingly, this petition stands dismissed at this juncture. The Registry is directed to prepare the typed set of papers and post the appeal for final disposal, if the same is otherwise in order.

-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 VI ADDITIONAL SESSIONS
JUDGE, CHENNAI

2 INSPECTOR OF POLICE, (L AND O),
H3, TONDIARPET POLICE STATION,
CHENNAI - 81.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S. R.SANKARASUBBU Advocate on payment of necessary
charges

Order

in
CRL MP.6579/2021

in
CRL A.324/2021

Date :27/08/2021

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

RVR 02/09/2021