

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Third day of February Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice V. SIVAGNANAM

CRIMINAL MISCELLANEOUS PETITION No.4634 of 2020

IN CRL.A.NO.297 OF 2020

C.PRABHAKARAN @ AROKYA JAYAPRABHAKARAN [PETITIONER / APPELLANT
ACCUSED]

Vs

THE STATE REP.BY [RESPONDENT / COMPLAINANT]
INSPECTOR OF POLICE,
B1, TOWN CENTRAL POLICE STATION,
UDHAGAMANDALAM
CRIME NO.659 OF 2009.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.297 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence and conviction passed in S.C.No.242 of 2010 dated 02.03.2020 by the learned Principal District and Session Judge, Coimbatore and enlarge the petitioner/appellant on bail till the disposal of the CRL.A.NO.297 OF 2020 [IN CRL.MP.NO.4634 OF 2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.297 OF 2020 on the file of the High Court and upon hearing the arguments of M/S.R.RADHA PANDIAN, Advocate for the petitioner and of MR.K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by P.N.PRAKASH,J)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 02.03.2020 passed in S.C.No.242 of 2010 on the file of the Principal District and Sessions Court, Coimbatore and to enlarge the petitioner on bail till the disposal of the appeal.

2. The petitioner, who was the fourth accused in S.C.No.242 of 2010 before the Principal District and Sessions Court, Coimbatore, was convicted and sentenced as follows on 02.03.2020:

S.No.	Provision under which convicted	Sentence
1	Section 120-B r/w 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo six months imprisonment.
2	Section 449 IPC	Life imprisonment and fine of Rs.5,000, in default to undergo six months imprisonment.
3	Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo six months imprisonment.

The aforesaid sentences were ordered to run concurrently.

3. It is the case of the prosecution that Sridhar (A1) had previous enmity with the deceased Sekar, inasmuch as, when Sridhar (A1) wanted money, Sekar helped him by giving his wife's jeweleries or pledging; however, Sridhar (A1) did not return the jeweleries, on account of which, there was misunderstanding between Sridhar (A1) and Sekar; as Sekar started demanding the return of the jeweleries, it is alleged that Sridhar (A1) had set up other accused viz., Murali @ Signal Murali (A2), Karthikeyan @ Karthik (A3), Prabhakaran @ Arokia Jeyaprabhakaran (A4), petitioner herein, Sibbu @ Sibbu Peter (A5) and Alex @ Alexandrian (A6) to liquidate Sekar; pursuant to that, on 27.06.2009, Karthikeyan @ Karthik (A3), Prabhakaran @ Arokia Jeyaprabhakaran (A4), petitioner herein and Sibbu @ Sibbu Peter (A5) barged into the canteen, where, Alex @ Alexandrian (A6) was waiting outside; the assailants indiscriminately attacked Sekar and caused his death.

4. Heard Mr.R.Radha Pandian, learned counsel for the petitioner (A4) and Mr.K.Prabhakar, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the petitioner (A4) submitted that the prosecution case rests on the evidence of Lingappa (PW8), who is said to have seen the assailants coming out of the canteen and had not actually seen the assault. He further submitted that Lingappa (PW8) identified the assailants in the Test Identification Parade, yet in the cross-examination, he stated that the police had shown the photographs of the assailants.

6. The learned Additional Public Prosecutor submitted that Lingappa (PW8) was examined-in-chief on 06.07.2015 and was recalled and cross-examined on 27.07.2017 nearly one year later.

7. In the opinion of this Court, the evidence of Lingappa (PW8) has to be appraised completely only during the final disposal of the appeal. For the present, there are sufficient materials to show that the petitioner (A4) was part of the gang that had attacked Sekar.

8. Taking into consideration the gruesome nature of the offence, this is not a fit case to grant suspension of sentence to the petitioner (A4).

In fine, this criminal miscellaneous petition is dismissed. The Registry is directed to call the records, prepare the typed set of papers and post the main appeal for disposal in the second week of March.

-sd/-
03/02/2021

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 PRINCIPAL DISTRICT AND SESSION JUDGE,
COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
B1, TOWN CENTRAL POLICE STATION,
UDHAGAMANDALAM.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

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

Order

in
CRL.MP.NO.4634/2020
in
CRL.A.NO.297/2020

Date :03/02/2021

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