

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.6001 of 2021

in Crl.A.No.235 of 2020

K.Madheswaran

... Petitioner/A1

Vs.

State through its
Inspector of Police,
Sooramangalam Police Station,
Salem District.
(Crime No.684 of 2013)

... 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 on the petitioner by judgment and order dated 26.02.2020 passed in S.C.No.113 of 2016 on the file of the learned II Additional District and Sessions Judge, Salem and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.T.Balaji

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

ORDER

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

This criminal miscellaneous petition has been preferred by Accused No.1, seeking to suspend the sentence imposed on him, by judgment and order dated 26.02.2020 passed in S.C.No.113 of 2016 on the file of the learned II Additional District and Sessions Judge, Salem and to enlarge him on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner/1st accused was the tenant under the deceased Selvaraj. After vacating the premises in which the petitioner was residing as a tenant, he requested the deceased to return the advance amount, but the said request was not considered by the deceased. In this regard,

complaint was also given by the petitioner/1st accused before the police authorities. Despite the same, the deceased did not give back the advance amount as requested by the petitioner/1st accused.

3. Thereafter, the petitioner/1st accused along with other five accused went to the place, in which the deceased was residing and attacked the deceased with an axe on the back side of the head. The other accused also attacked the deceased by using the wooden log and iron rod. For the said occurrence, a case in Crime No.684 of 2013, has been registered against the petitioner/1st accused and others on the file of the respondent police.

4. The trial Court convicted the petitioner/1st accused and two others alone and acquitted Accused Nos.4 to 6. Though, charge sheet has been filed against the petitioner/1st accused for the offence under Sections 148, 307 and 302 IPC, the trial Court rendered conviction for the offence under Section 302 IPC alone and accordingly, sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/- in default, to undergo one year simple imprisonment.

5. Challenging the above conviction and sentence, the petitioner/Accused No.1, has filed CrI.A.No.235 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

6. Heard Mr.T.Balaji, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (CrI.Side) appearing for the respondent/State.

7. Mr.T.Balaji, learned counsel appearing for the petitioner/1st accused submitted there is undue delay in giving the FIR. There is a material contradiction between the evidence of P.Ws1, 2 and 3 among themselves. They are interested witnesses. The trial Court has not considered the relevant materials in the correct perspective. Therefore, the petition seeking suspension of sentence will have to be allowed.

8. Mr.R.Muniyapparaj, the learned Government Advocate (CrI.Side) appearing for the respondent submitted that before the trial Court, in order to prove the case of the prosecution, three eye witnesses have been examined as PW1 to PW3. The evidences given by PW1 to PW3, do not have any material contradictions. The whole evidence given by PW1 to PW3, reveals the fact that during the time of occurrence, only due to the attack made by the petitioner/1st accused and others viz., A2 and A3, the said Selvaraj died. According to him, suspending the sentence of imprisonment is not necessary in this appeal.

9. Considering the rival submissions made by the learned counsel on either side, it is true, before the trial Court, the witnesses examined on the side of the prosecution as PW1 to PW3, has clearly narrated the occurrence as alleged by the prosecution. In this regard, on going through the whole evidence recorded from PW1 to PW3,

it reveals the fact that during the time of occurrence by using an Axe, the petitioner/1st accused only one time assaulted the deceased on his back side of the head and only the other accused in this case by using dangerous weapons, assaulted the deceased on his vital area. Therefore, it is necessary to find out whether the assault made by the petitioner/1st accused alone is sufficient to cause the death of the deceased. In this regard, the evidence given by PW1 to PW3, requires a detailed appraisal.

10. Further, the other accused viz., Accused Nos.2 and 3, have been released on bail by this Court on 29.06.2020. The petitioner/1st accused, has been under incarceration from 26.02.2020 onwards and the present appeal is not likely to be taken up in the near future.

11. 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/1st accused.

12. 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 II Additional District and Sessions Judge, Salem.
- (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/-

18/06/2021

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 II ADDITIONAL DISTRICT AND SESSIONS
JUDGE, SALEM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
SOORAMANGALAM POLICE STATION,
SALEM DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1 C.C. to M/S. A.THIIYAGARAJAN Advocate on payment of necessary
charges SR.NO.6640

Order

in

CRL MP.6001/2021

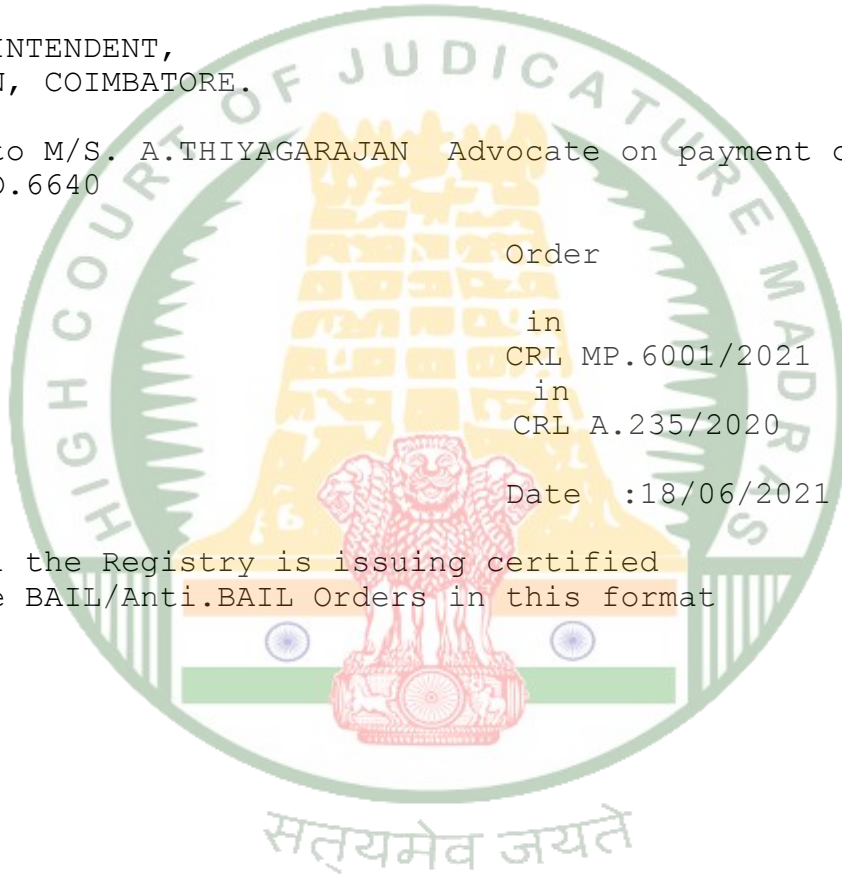
in

CRL A.235/2020

Date :18/06/2021

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