

Reserved on : 22.06.2021

Pronounced on : 25.06.2021

Crl.M.P.No.6090 of 2021

in

Crl.A.No.160 of 2021

P. N. PRAKASH , J.
and
R.PONGIAPPAN , J.

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

This criminal miscellaneous petition has been filed seeking to suspend the sentence of imprisonment imposed upon the petitioner/accused, by judgment and order dated 01.02.2021 passed in S.C.No.334 of 2014, on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

2. The case of the prosecution is that on 25.02.2014 at 7.00pm the petitioner/accused came to his house under the influence of alcohol and developed a quarrel with his wife and consequentially, by using a bill hook attacked his wife/deceased at her neck. Due to the said attack, the deceased sustained severe injury on her neck and resultantly, she died on 28.02.2014 at

7.45pm in JIPMER Hospital, Puducherry. For the said occurrence, a case has been registered against the petitioner/accused in Cr.No.90 of 2014 on the file of the Auroville Police Station, under Section 302 IPC.

3. After concluding the trial, the learned Sessions Judge, Magalir Neethimandram, [Fast Track Mahila Court], Villupuram, came to the conclusion that the petitioner/accused is found guilty of the offence under Section 302 of IPC and thereby, convicted and sentenced him to undergo imprisonment for Life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for six months.

4. Challenging the above conviction and sentence, the petitioner/accused, has filed Crl.A.No.160 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

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

6. Mr.P.Pugalenth, learned counsel appearing for the petitioner/accused, would contend that the complaint pertains to this occurrence had been lodged before the police officer with a long delay. Further, the evidences given by the Doctor, who conducted the postmortem on the body of the deceased Navaneetham, was entirely different from the evidence recorded from the person, who admitted the deceased in the hospital. According to him, those aspects now narrated is sufficient for allowing the appeal. He would further submit that during the time of trial, the petitioner/accused was enlarged on bail and during such time, he has not misused the liberty. With the above submissions, he prayed to allow this petition.

7. Per contra, Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing on behalf of the respondent State would contend that the evidence given by the Doctor in respect to the admission of deceased in the hospital, is a hearsay one. In this case, no dying declaration is recorded. Even the police officer, could not obtain the statement from the deceased in the hospital. Therefore, the evidence given by the Doctor in respect to the admission of deceased in the hospital is not at all relevant. He would further

contend that for the delay in registering the case, sufficient explanation was offered by the prosecution witnesses and therefore, the submission made by the learned counsel for the petitioner/accused is not at all a ground for allowing this petition.

8. Now, on considering the rival submissions made by the learned counsel on either side, it seems that only on 01.02.2021, the trial Court convicted the petitioner/accused as he was guilty under Section 302 IPC. It is true, that the FIR in respect to this case has been registered with a considerable delay. In the said circumstances, it is necessary to borne in mind that though, the FIR in respect to the particular offence is registered with a delay, that alone is not sufficient to hold that the entire occurrence is a false one. If reasonable explanation is offered by the prosecution witnesses that is sufficient to accept the entire prosecution case. Secondly, the statement given by the third party alone are entered into the Accident Register. The genuineness of such statement has to be decided only during the time of hearing the arguments from both sides. In otherwise, the grounds now raised by the learned counsel appearing for the petitioner/accused is not sufficient to hold that the petitioner/accused is entitled for suspension of sentence.

9. In a similar situation, in *Vijayakumar Vs. Narendra and others*, reported in **2002 (9) SCC 364**, our Hon'ble Apex Court has held that in considering the prayer for bail in a case involving serious offences like murder punishable under Section 302 IPC, the Court should consider 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 offence, and the desirability of releasing the accused on bail after they have been convicted for committing serious offence of murder.

10. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. Further, the mere fact that during the period when the accused person were on bail during trial there was no misuse of liberties, does not *per se* warrant suspension of execution of sentence and grant of bail.

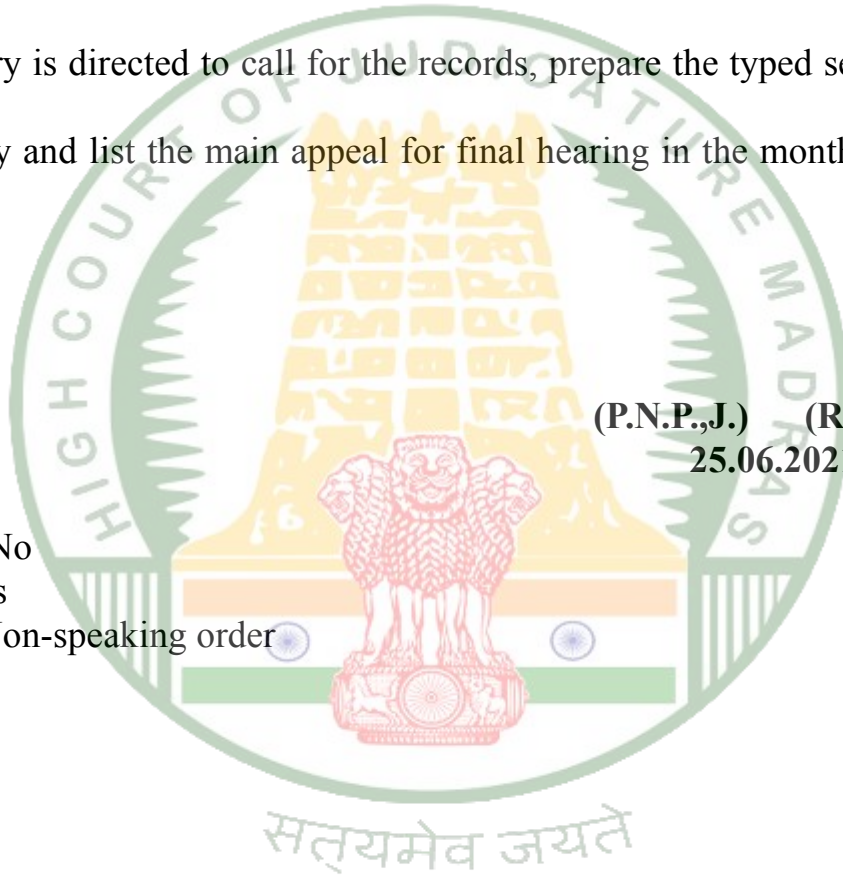
11. Therefore, applying the principles set out in the above referred judgment as well as considering the gravity of the offence committed by the

petitioner/accused, we are of the opinion that this is not a fit case to suspend the sentence of imprisonment and grant bail to the petitioner/accused.

12. In the result, this criminal miscellaneous petition is dismissed. The Registry is directed to call for the records, prepare the typed set of papers immediately and list the main appeal for final hearing in the month of August 2021.

(P.N.P.,J.) (R.P.A.,J.)
25.06.2021

Index:Yes/No
Internet:Yes
Speaking/Non-speaking order
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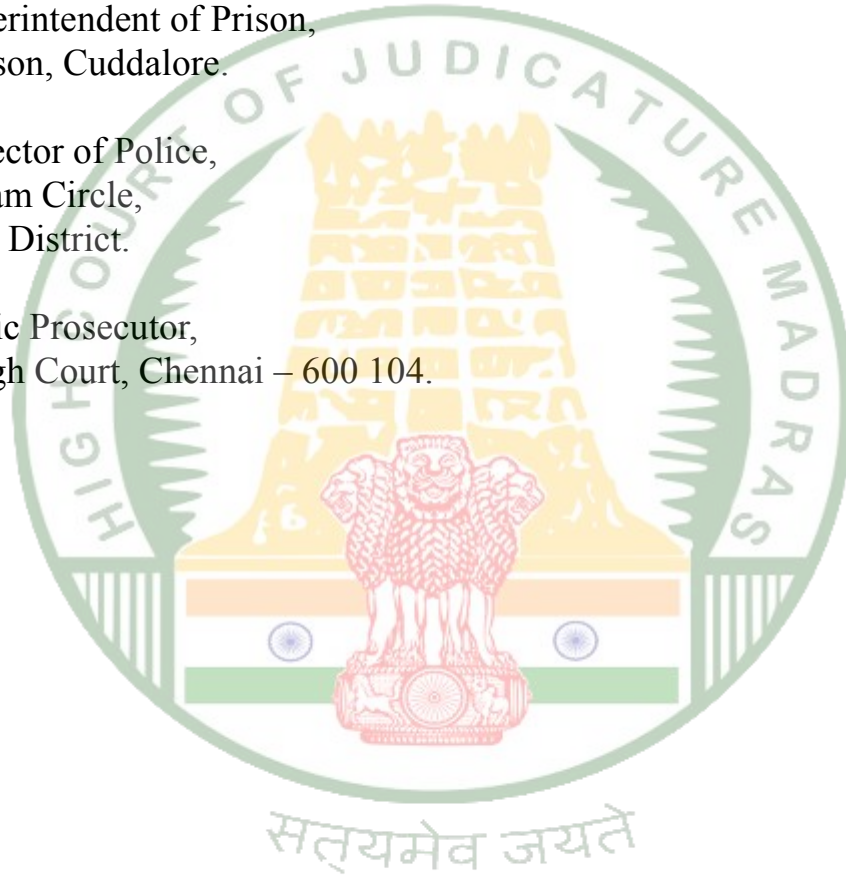
To

1.The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court),
Villupuram.

2. The Superintendent of Prison,
Central Prison, Cuddalore.

3.The Inspector of Police,
Kottakuppam Circle,
Villupuram District.

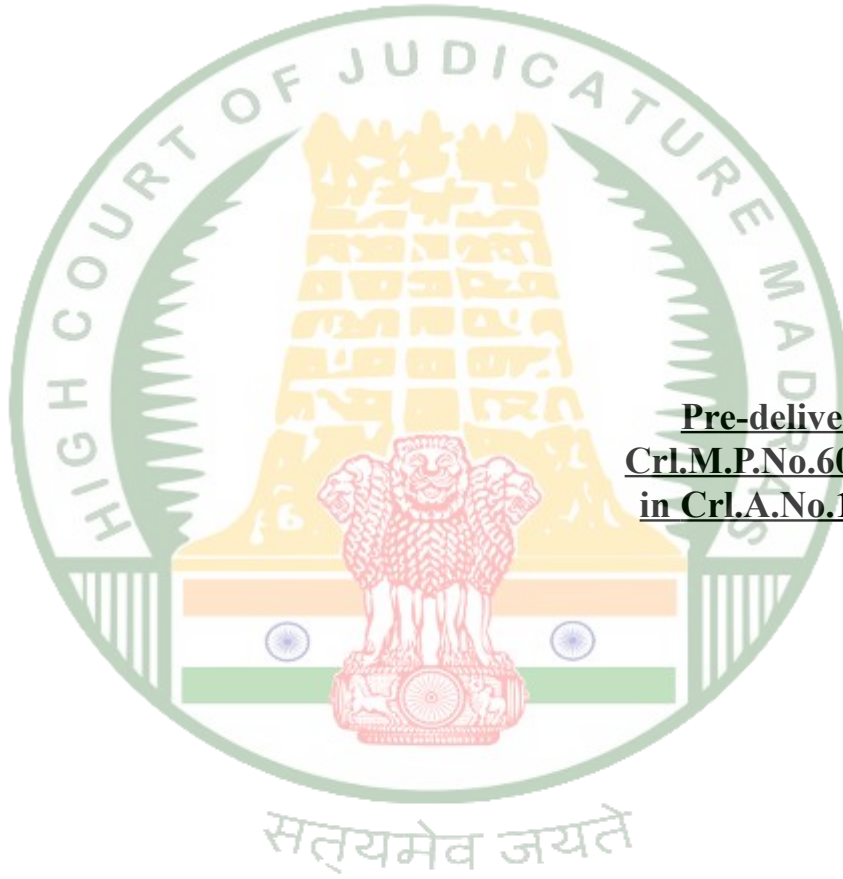
4.The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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Pre-delivery order in
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in Crl.A.No.160 of 2021

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