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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.5875 of 2021

in

Crl.A.No.259 of 2021

Viswanathan .. Petitioner/sole accused

Vs.

State through its
The Inspector of Police,
Vellakoil Police Station,
Tiruppur District.
(Crime No.410 of 2018)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence passed in Spl.S.C.No.13 of 2018 dated 14.02.2020, on the file of the Principal District and Sessions Judge, Tiruppur.

For Petitioner : Mr.R.Sankara Subbu

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

O R D E R

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

This criminal miscellaneous petition has been preferred by the accused seeking to suspend the sentence imposed upon him, by judgment and order dated 14.02.2020 passed in Spl.S.C.No.13 of 2018 on the file of the learned Principal District and Sessions Judge, Tiruppur and to enlarge him on bail pending disposal of the appeal.

2. The petitioner herein is the sole accused in Spl.S.C.No.13 of 2018 on the file of the learned Principal District and Sessions Judge, Tiruppur. The trial Court, by judgment dated 14.02.2020 convicted the petitioner for the offence punishable under Sections 302 and 201 of IPC and sentenced him as follows:



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Offence	Sentence
302 IPC	undergo life imprisonment and to pay a fine of Rs.1,000/- in default, to undergo six months rigorous imprisonment
201 IPC	undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment

Seeking suspension of sentence imposed, the present petition has been filed.

3. The deceased in this case, is the wife of the petitioner/accused. On 10.08.2018 at about 14.00 hours, with the intention to kill his wife, the petitioner/accused brought the deceased to Soriyankinathupalayam and thereafter, by using the saree, worn by the deceased, strangled the neck of the deceased. Due to the said strangulation, the deceased died. Further, when at the time of killing the deceased, the petitioner/accused attempted to grab the cell phone from the deceased. More than that, the deceased in this case belongs to Scheduled Caste Community. Thus, the petitioner/accused had committed the offence under Sections 302, 201 and 392 r/w 397 IPC and Section 3(2) (va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015.

4. The learned counsel appearing for the petitioner/accused submitted that except the extra judicial confession given by the petitioner/accused, no material is available to incriminate the petitioner/accused, in the alleged offence. If the petitioner/accused is really having any intention to kill his wife, it is not necessary to grab the cell phone from the deceased. According to him, the petitioner/accused is falsely implicated in this case. The petitioner/accused has been under incarceration from 14.02.2020. The petitioner/accused is the sole breadwinner of his family. Therefore, the suspension of sentence will have to be granted.

5. Mr.R.Muniyapparaj, the learned Government Advocate (Crl. Side) appearing for the State submitted that the conviction has been rendered placing reliance upon the evidence given by the witnesses, who attested the confession statement given by the petitioner/accused and in the recovery mahazar. Further, before the Village Administrative Officer, the petitioner/accused confessed the occurrence and admitted that he alone committed this offence. Therefore, the extra judicial confession coupled with recovery under Section 27 of the Indian Evidence Act, 1872 is sufficient to hold that the petitioner alone has murdered his wife. Thus, this petition requires to be dismissed.



6. Considering the submissions made, we are of the view that there are substantial issues to be considered in the appeal. Since the extra judicial confession was recorded by the Village Administrative Officer after four days from the date of occurrence, the validity of the said evidence needs a detailed appraisal. Further, it is not necessary for the petitioner/accused to grab the mobile phone, which was used by the deceased, at the time of occurrence and the same needs a detailed appraisal.

7. Moreover, the petitioner/accused has been in incarceration from 14.02.2020. Further, the appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner/accused is entitled to the relief of suspension of sentence and bail.

8. 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 Principal District and Sessions Judge, Tiruppur.
- (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/-

15/07/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.



1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
TIRUPPUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
VELLAKOIL POLICE STATION,
TIRUPPUR DISTRICT.

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

Order

in
CRL MP.5875/2021

in
CRL.A.259/2021

Date :15/07/2021

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