

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.6108 of 2021

in Crl.A.No.69 of 2021

1. Ramesh Kumar
2. Prabakaran

.. Petitioners/A1 & A2

Vs.

Inspector of Police,
Dharmapuri Police Station,
Dharmapuri District.
(Crime No.106 of 2019)

.. 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 upon the petitioners by judgment and order dated 15.12.2020 passed in S.C.No.82 of 2019 on the file of the learned Additional Sessions Judge, Dharmapuri and to enlarge the petitioners on bail pending disposal of the appeal.

For Petitioners: Mr.G.Bhagavathsingh

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 the accused 1 and 2, seeking to suspend the sentence imposed upon them, by judgment and order dated 15.12.2020 passed in S.C.No.82 of 2019 on the file of the learned Additional Sessions Judge, Dharmapuri and to enlarge them on bail pending disposal of the appeal.

2. The petitioners, who are the accused 1 and 2 in S.C.No.82 of 2019 on the file of the learned Additional Sessions Judge, Dharmapuri,

were convicted of the offence under Section 302 IPC and sentenced as follows:

Accused	Offence	Sentence
A1 & A2	302 IPC	Life imprisonment along with fine of Rs.5,000/-, in default, simple imprisonment for one year.

3. Challenging the above conviction and sentence, the petitioners/accused 1 and 2, have filed CrI.A.No.69 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.G.Bhagavathsingh, learned counsel for the petitioners/accused 1 and 2 and Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. It is the case of the prosecution that on 22.02.2019 at about 10.00 pm, all the accused in this case went to L & T lorry parking area located near Dharmapuri-Pennagaram bridge and quaralled with the deceased Pradeep in respect to the balance loan amount, payable to the petitioners/accused. During such time, with intention to kill the deceased Pradeep, 2nd accused caught hold of the deceased and thereafter, the 1st accused stabbed him with a knife on his left chest so saying, “இத்தோடு நீ தொலைந்து போடா”. As a result of stab injury, the said Pradeep died. Thus, the petitioners/accused 1 and 2 and other accused [A3], now acquitted have committed the offence punishable under Section 302 r/w. 34 IPC.

6. The learned counsel for the petitioners/accused 1 and 2 would contend that during the time of occurrence, the petitioners herein are not having any intention to kill the deceased. Only due to the development of wordy altercation, the alleged occurrence had happened. In this regard, in respect to the motive, intention and overtact, the petitioners/accused 1 and 2 are having substantial points and therefore, he prayed to allow this petition seeking suspension of sentence to the petitioners/accused 1 and 2. सत्यमेव जयते

7. Per contra, the learned Government Advocate (CrI. Side) appearing for the respondent/State would contend that the evidences recorded from the prosecution witnesses would prove the case of the prosecution beyond reasonable doubt. According to him, interference of this Court is not necessary in the findings arrived at by the trial Court.

8. Now, on considering the rival submissions made by the learned counsel appearing on either side along with the relevant records, it seems that during the time of occurrence, 1st accused alone stabbed the deceased, in otherwise, 2nd accused had only caught hold of the deceased for enabling the 1st accused to commit this offence. In this regard, a detailed appraisal is necessary, to find out whether the 2nd accused is

having the intention to kill the deceased, as alleged by the prosecution. It is also necessary to appraise the evidence of PW2 and PW3, in respect to the evidence given by them with regard to the occurrence place.

9. In such a view of the matter, in respect to the 1st petitioner, considering the overtact attributed against him, this Court is not inclined to allow this petition. In otherwise, in respect to the 2nd petitioner, he has been in incarceration from 15.12.2020 and the appeal is not likely to be taken up in the near future. Therefore, the 2nd petitioner alone is entitled to the relief of suspension of sentence and bail.

10. Accordingly, sentence of imprisonment of the 2nd petitioner, alone is suspended and bail is granted to the 2nd petitioner alone on the following conditions:

- (i) The 2nd petitioner/A2 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 Additional Sessions Judge, Dharmapuri.
- (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 2nd petitioner/A2 shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the 2nd petitioner/A2 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/-

29/06/2021

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 ADDITIONAL SESSIONS JUDGE,
DHARMAPURI.

2 THE INSPECTOR OF POLICE,
DHARMAPURI POLICE STATION,
DHARMAPURI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.G.BHAGAVATHSINGH Advocate on payment of necessary
charges

Order

in
CRL MP.6108/2021

in
CRL A.69/2021

Date :29/06/2021

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सत्यमेव जयते

MN-01/07/2021

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