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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.6418 of 2021

in Crl.A.No.51 of 2020

Velu

...Petitioner/A2

Vs.

State through its
Inspector of Police,
B-1, North Beach Police Station,
Chennai District.
(Crime No.526 of 2006)

...Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed upon the petitioner by judgment and order dated 19.12.2019 passed in S.C.No.456 of 2007 on the file of the learned VII Additional District and Sessions Judge, Chennai and to enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.S.Manoharan

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 2nd accused seeking to suspend the sentence imposed upon him, by judgment and order dated 19.12.2019 passed in S.C.No.456 of 2007 on the file of the learned VII Additional District and Sessions Judge, Chennai and to enlarge him on bail pending disposal of the appeal.

2. The petitioner, who is the 2nd accused in S.C.No.456 of 2007 on the file of the learned VII Additional District and Sessions Judge, Chennai, was convicted of the offence under Section 302 r/w 34 of IPC and sentenced to undergo Life imprisonment along with fine of Rs.2,000/-, in default, simple imprisonment for three



months. Further, the petitioner/A2 was convicted of the offence under Section 394 of IPC and was sentenced to undergo Life imprisonment along with fine of Rs.2,000/-, in default, simple imprisonment for three months. The sentences are directed to run concurrently.

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3. Challenging the above conviction and sentence, the petitioner/A2 has filed CrI.A.No.51 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Manoharan, learned counsel for the petitioner/A2 and Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. The case of the prosecution is as follows:

(i) On 09.09.2006 at about 9.00am, as usual, the *de facto* complainant went to his construction company from his mother's house and returned back at 5.30pm. At that time, the *de facto* complainant noticed his house servant Syed Ibrahim [A1], accompanied by the petitioner/A2, car driver of White Star Company along with one unknown person [A3] coming down in a hurry through the steps. When the *de facto* complainant questioned A1, as to where he was going, he replied that he will be back after sending them. The complainant noticed that their house main door padlock closed outside. He entered into the house and found his mother waylaying on one side of the bed. As there was no response to the *de facto* complainant's call, he went and touched his mother, who was found unconscious with blood bleeding from her mouth and nose. Subsequently, his mother died.

(ii) The further case of the prosecution is that on 10.09.2006, when the *de facto* complainant opened the bureau, he notice that his mother's chain, bangles, nokia cell phone and cash of Rs.40,000/- found missing. Thereby, the petitioner/A2 and other accused in this case have committed the offence punishable under Sections 302 r/w 34 of IPC and Section 394 of IPC.

6. The learned counsel appearing for the petitioner/A2 submitted that the entire case of the prosecution rests upon the witnesses, who have signed in the confession statement given by the accused as well as in the seizure mahazar. The evidence in respect to the arrest and recovery, is having material contradictions, which would affect the case of the prosecution. The evidence given by DW3, who is the family Doctor of the deceased, had not been considered. Further, the petitioner/A2 has been under incarceration from 19.12.2019 and he is the sole breadwinner of his family. Therefore, the suspension of sentence will have to be granted.

7. Mr.R.Muniyapparaj, the learned Government Advocate (CrI. Side) appearing for the State submitted that the conviction has been rendered placing reliance upon the evidence given by the witnesses, who have signed in the confession statement / seizure mahazar. Further, the evidence given by the Doctor, who conducted the



postmortem is also fully in favour of the prosecution. According to him, this petition requires to be dismissed.

8. Considering the submissions made, we are of the view that there are substantial issues to be considered in the appeal. Further, the evidence given by DW3-Dr.M.K.Arunachalam leads to a doubt in respect to the cause of death. Therefore, his evidence needs a details appraisal. Further, it is an admitted fact that the petitioner/A2 was working as a driver in some other company and the trial Court has also taken note of the aforesaid fact.

9. Thus, considering the above facts, especially the period of incarceration, as aforesaid and also as the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence for the petitioner/A2.

10. 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 VII Additional District and Sessions Judge, Chennai.
- (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/-
14/07/2021

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.



1 THE VII ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CHENNAI.

2 THE INSPECTOR OF POLICE,
B-1, NORTH BEACH POLICE STATION,
CHENNAI-1.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON-II, CHENNAI.

+1 C.C. to M/S. S.MANOCHARAN Advocate on payment of necessary
charges SR.NO.7370

Order

in
CRL MP.6418/2021

in
CRL A.51/2020

Date :14/07/2021

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TA-16/07/2021