



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.6966 of 2021

in

Crl.A.No.542 of 2020

1. Kumar

2. Sivabalan

.. Petitioners/A2 and A3

Vs.

State through its
The Inspector of Police,
Thiruvennai Nallur Police Station,
Villupuram District.

(Crime No.73 of 2015)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence passed in S.C.No.153 of 2015 dated 16.12.2020, on the file of the learned Additional Sessions Judge, [Fast Track Court], Villupuram.

For Petitioners : Mr.E.Kannadasan

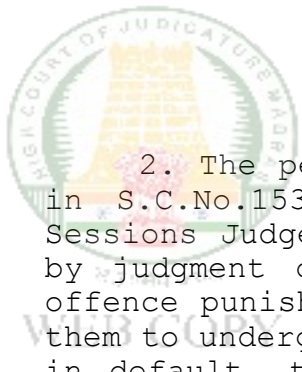
For Respondent : Mr.R.Muniyapparaj

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 Nos.2 and 3, seeking to suspend the sentence imposed upon them, by judgment and order dated 16.12.2020 passed in S.C.No.153 of 2015 on the file of the learned Additional Sessions Judge, [Fast Track Court], Villupuram and to enlarge them on bail pending disposal of the appeal.



2. The petitioners herein are arrayed as accused Nos.2 and 3 in S.C.No.153 of 2015 on the file of the learned Additional Sessions Judge, [Fast Track Court], Villupuram. The trial Court, by judgment dated 16.12.2020 convicted the petitioners for the offence punishable under Section 302 of IPC and sentenced each of them to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

3. The case of the prosecution is that on 25.01.2015, when at the time the deceased Rayar and his son Ayyappan [PW3], took the cow in a common passage, all accused in this case, insulted the deceased by using the abusive words. Consequentially, on the same day, at about 10.00pm, when the deceased was in his house along with PW1 to PW3, who are his sons and daughters, the petitioners herein and other accused [A1 & A4] went there and insulted the family members of the deceased and further by using a wooden log, attacked the deceased, on his head. Due to the said attack, the deceased sustained head injury and as a result, he died on 26.01.2015. Thus, the petitioners/accused Nos.2 and 3, had committed the offence under Section 302 of IPC.

4. The learned counsel appearing for the petitioners/accused Nos.2 and 3, would contend that in respect to the attack made by the petitioners/accused, the evidence let in by the prosecution, are having lot of contradictions. Further, the evidence given by the Doctor, who conducted postmortem is not in accordance with the evidence given by the eyewitnesses. Moreover, the petitioners/accused Nos.2 and 3, have been under incarceration from 16.12.2020, further, they are the sole breadwinner of their family. Therefore, the suspension of sentence will have to be granted to the petitioners herein.

5. Repudiating the contentions raised by the learned counsel for the petitioners/accused Nos.2 and 3, Mr.R.Muniyapparaj, the learned Government Advocate (Crl. Side) appearing for the State would contend that the contradictions now indicated by the petitioners' counsel are all minor in nature. In otherwise, the said contradictions are not in the form of affecting the root of the prosecution case. According to him, this petition requires to be dismissed.

6. Submissions made by the learned counsel appearing on either side, are considered. The petitioners/accused 2 and 3 have raised substantial grounds in this appeal, which require detailed appraisal. Moreover, the petitioners/accused Nos.2 and 3, have been in incarceration from 16.12.2020. 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 petitioners/accused Nos.2 and 3, are entitled to the relief of suspension of sentence and bail.



7. Accordingly, sentence of imprisonment alone is suspended and bail is granted to the petitioners on the following conditions:

- (i) Each of the petitioners 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, [Fast Track Court], Villupuram.
- (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 petitioners shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioners 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 they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.

-sd/-
20/07/2021

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 ADDITIONAL SESSIONS JUDGE,
[FAST TRACK COURT], VILLUPURAM.

2 THE OFFICER INCHARGE,
DISTRICT JAIL, VILLUPURAM.

3 THE INSPECTOR OF POLICE,
THIRUVENNAI NALLUR POLICE STATION,
VILLUPURAM DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S.E.KANNADASAN Advocate on payment of necessary
charges SR NO.7599

Order

in
CRL.MP.NO.6966/2021
in
CRL.A.NO.542/2020

Date :20/07/2021

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MK:22/07/2021