



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Friday, the Thirtieth day of July Two Thousand Twenty One

WEB COPY

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.7293 of 2021

IN CRL.A.No.325 OF 2020

SAKTHIVEL

[PETITIONER/ACCUSED]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
THIRUPATHUR TALUK POLICE STATION,
VELLORE DISTRICT.
(CRIME NO.06 OF 2015).

[RESPONDENT/COMPLAINANT]

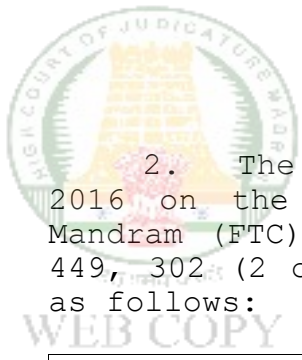
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased

(i) To Suspend the Sentence imposed upon the petitioner by the Learned Sessions Judge, Magalir Neethi Mandram (FTC), Vellore made in S.C.No.25/2016 by a Judgement dated 08.11.2019 and release him on bail pending disposal of in Crl.A.325/2020.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.M.R.THANGAVEL, Advocate for the petitioner, and of Mr.MUNIYAPPARAJ Government Advocate (Crl. Side) on behalf of the Respondent, the court made the following order:-

(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 08.11.2019 passed in S.C.No.25 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTC), Vellore and to enlarge him on bail pending disposal of the appeal.



2. The petitioner, who is the sole accused in S.C.No.25 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTC), Vellore, was convicted of the offence under Sections 449, 302 (2 counts) and 392 r/w 397 (2 counts) of IPC and sentenced as follows:

Offence	Sentence
449 IPC	To undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months.
302 IPC (2 counts)	For each count to undergo life imprisonment and pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months.
392 r/w 397 IPC (2 counts)	For each counts to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months.

3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.325 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.M.R.Thangavel, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the respondent/State.

5. The case of the prosecution is that on 03.01.2015 in night hours, the petitioner herein with an intention to commit the offence of robbery, in a house in which both the deceased are residing, criminally trespassed and during the time of occurrence, by using the Plunger Rod (உலக்கை தடி) attacked the deceased on their head, as a result of which the petitioner committed double murder and thereafter, he removed the Gold ornaments (தங்க தோடு, தாலி, கால்காக) weighing about 1 ½ souverign from the dead body of the deceased Meena. Thus, the petitioner committed the offence stated supra.

6. The learned counsel appearing for the petitioner/accused would submit that the evidence given by the prosecution witnesses are having lot of material contradictions. In order to prove the attack made by the petitioner and in respect to the recovery, the evidence given by the prosecution witnesses are not in their support. Accordingly, he prayed to allow this petition.

7. Mr.R.Muniyapparaj, the learned Government Advocate (Crl. Side) appearing for the State submitted that the judgment rendered by the trial Court is very clear and hence, he strongly opposed this petition.



8. Now, on considering the said submission with the relevant records, it is a case of double murder. Further, as per the case of the prosecution, while at the time of committing the robbery, the petitioner has attacked the deceased and committed the offence. So, the nature of the offence committed by the petitioner/accused is a heinous one. In this connection, it is useful to refer to the judgment in Vijayakumar Vs. Narendra and others, reported in 2002 (9) SCC 364, wherein our Hon'ble Apex Court has held as follows:

"... 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."

9. Therefore, the legal position is very clear that the power of this Court to suspend the order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, but, its exercise should be limited to very exceptional cases. Merely because of the reason that the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.

10. Therefore, applying the principles set out in the above referred judgment, though the petitioner/accused has been under incarceration from 08.11.2019 onwards, 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.

11. In the result, this criminal miscellaneous petition is dismissed.

-sd/-
30/07/2021

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.



TO

1 THE SESSION JUDGE,
MAGALIR NEETHI MANDRAM (FTC),
VELLORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE INSPECTOR OF POLICE,
THIRUPATHUR TALUK POLICE STATION,
VELLORE DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

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

Order

in
CRL MP.7293/2021
in

CRL.A.325 OF 2020

Date :30/07/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

JPA 05/08/2021