



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Eighth day of October Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Ms Justice R.N. MANJULA

CRIMINAL MISCELLANEOUS PETITION No.9800 of 2021

IN

CRL.A.NO.427 of 2020

GANESAN

[PETITIONER/APPELLANT/ACCUSED]

Vs

STATE REP.BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
SINGARAPETTAI POLICE STATION,
KRISHNAGIRI DISTRICT.
(CR.NO.115 OF 2013)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.427 of 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.118 of 2014 dated 16/10/2020 on the file of Sessions Judge, Fast Track Mahila Court, Krishnagiri and Enlarge the petitioner on bail, pending disposal of the above Crl.A.No.427 of 2020 on the file of this Hon'ble Court and thus render justice.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.427 of 2020 on the file of the High Court and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the petitioner and of MR.R.MUNIYAPPARAJ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

O R D E R

P.N.PRAKASH, J.

The petitioner, who was A-2 in S.C.No.118 of 2014, on the file of the Sessions Court (Fast Track Mahila Court), Krishnagiri, was convicted and sentenced on 16.10.2020 as follows :



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Provision which convicted	under	Sentence
Sections r/w 302 IPC	120-B	Imprisonment for life with fine of Rs.2,000/-, in default to undergo four months rigorous imprisonment
Section 302 IPC		Imprisonment for life with fine of Rs.2,000/-, in default to undergo four months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently. Challenging the above conviction and sentence, the petitioner has filed the present appeal in Crl.A.No.427 of 2020 and has also filed the instant criminal miscellaneous petition seeking suspension of sentence and bail.

2. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

3. At the outset, it may be necessary to state here that this is the second petition for suspension of sentence and bail and the earlier petition in Crl.M.P.No.1136 of 2021 was dismissed by this Court on 17.03.2021 vide a detailed order and the relevant portion is as under :

"7.We have considered the submissions of the learned counsel for the parties and perused the materials on record.

8.It is case of murder by the relatives of the deceased for getting legal heirship certificate and compensation for land acquisition proceeding and also land from the deceased-Jayakodi and her husband. Since both the deceased and her husband did not have legal heirs, their relatives attempted to grab the properties from them. Further, there was a dispute between the deceased-Jayakodi and her sister-in-law's family. The land owned by the deceased-Jayakodi was recovered by the Government under the Land Acquisition Act, for which, she received a huge amount as compensation. In order to receive the same from her, the accused persons planned to murder her. On 19.04.2013, about 12'o clock (midnight), the petitioners herein assaulted the deceased-Jayakodi by crushing her neck and also by giving electric shock, they murdered her. Originally, the case was registered as against four accused persons and thereafter, the 1st and 3rd accused were discharged from prosecution by order dated 29.01.2016 passed by this Court in Crl.R.C.No.1042 of 2015. Remaining accused/ petitioners herein were prosecuted by the Court below and they were sentenced as stated *supra*.



9. P.W.s 1 and 4 to 8 deposed about the enmity between the deceased and the accused persons with regard to the legal heirship certificate and for compensation amount under the land acquisition proceedings. Based on the evidences adduced by the prosecution, the trial Court found that the charges as against the petitioners were proved and convicted accordingly. Therefore, we find that there is *prima facie* evidence available and we find no reason to suspend the sentence imposed on the petitioners."

4. However, Mr. Sankarasubbu took us through the cross-examination of P.W. 7 and P.W. 8 and submitted that they were not eyewitnesses and that the entire case is based on circumstantial evidence. It is true that the case is based on circumstantial evidence, but, we find that P.W. 7 was examined in-chief on 29.01.2019 and on that day, he was not cross-examined and was recalled and cross-examined on 20.08.2019. Similarly, P.W. 8 was examined in-chief on 29.01.2019 and was recalled and cross-examined on 27.08.2019. Thus, this Court cannot read the cross-examination alone, but, should read the entire evidence of these witnesses, for appreciating their testimony, which is desirable only at the time of final disposal of the appeal.

5. Mr. Sankarasubbu took us through the statements of the witnesses recorded under Section 161(3) Cr.P.C. and contended that their evidence has no probative value. We are unable to appreciate this submission because, a police statement recorded under Section 161 Cr.P.C. cannot be used for any purpose, save only to contradict the deponent, whilst he is in the witness box. Therefore, we cannot legally look into the 161 Cr.P.C. statements, for deciding the present miscellaneous petition.

6. Superadded, in *Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)* [(2008) 5 SCC 230], the Supreme Court has held as follows:

"30. ... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in *Vijay Kumar* [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all 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 the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to



*suspend the sentence and it is only in exceptional cases
that the benefit of suspension of sentence can be granted."*
(emphasis supplied)

7. That apart, we find no change in the fact situation also,
warranting grant of suspension of sentence and bail to the
petitioner.

In view of the foregoing reasons, this petition stands
dismissed. The Registry is directed to prepare the typed set of
papers and post the appeal for final disposal.

-sd/-

28/10/2021

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 SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
KRISHNAGIRI.

2 THE INSPECTOR OF POLICE,
SINGARAPETTAI POLICE STATION,
KRISHNAGIRI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

Order
in
CRL MP.9800/2021
in
CRL.A.427/2020
Date :28/10/2021

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

CSK 29/10/2021