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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.10.2021
Pronounced on	29.10.2021

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

and

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.M.P.No.8973 of 2021

in Crl.A.No.416 of 2021

Muruganandham

.... Petitioner/Appellant

Versus

The State represented by
The Inspector of Police,
Needamangalam Police Station,
Crime No.28 of 2019

.... Respondent

Prayer: Criminal Miscellaneous Petition is filed under Section 389(2) Code of Criminal Procedure, to suspend the sentence imposed on the accused in S.C.No.69 of 2021, dated 22.03.2021 on the file of the Additional District and Sessions Judge, (Fast Track Mahila Court), Tiruvarur and to enlarge the petitioner on bail.

For Appellant : Mr. M.R.Sivasubramaniam

For Respondent : Mr.R.Muniyapparaj,

Addl. Public Prosecutor (crl.side)

ORDER

The case of the prosecution is that the accused is the husband of the deceased Arulselvi. The mother of Arulselvi who is the defacto complainant herein and the accused are residing in the same street. The accused was in the habit of suspecting the fidelity of his wife and manhandling her; during such occasions the deceased would come to her parental house and after a few days her parents would convince the deceased and send her back to her matrimonial home. On 20.02.2019 at about 8 hours the deceased came to her parents house in an agitated manner and stated that she is scared to live with the accused. She stayed that night at her parents' house and at 09.00 a.m. on 23.02.2019 she went back to her house to bring her son



also. Since she did not return thereafter, her parents went to her house at 4.00 a.m., and found that the accused took a saree and twisted it around the neck of the deceased and caused her death by strangulation. On seeing the parents of the deceased, the accused threatened to kill them also. Thus the accused had committed the offences punishable under Sec.302 and 506(II) IPC. The learned Additional District and Sessions Judge, Thiruvavarur, before whom the case was tried, found the accused guilty for the offence under Sec.302 and 506(ii) IPC and sentence him as below:

<i>Provision under which convicted</i>	<i>Sentenced the accused</i>
Section 302 of IPC	(i) To undergo Life Imprisonment and to pay fine of Rs.5,000/- (ii) in default to undergo further period of six months rigorous Imprisonment.
Section 506 (II) IPC.,	(i) To undergo three years rigorous imprisonment and to pay fine of Rs.3,000/-. (ii) in default to undergo further period of six months rigorous Imprisonment.

2. Challenging the above conviction and sentence, the petitioner/ Appellant /Accused has filed the Criminal Appeal. Pending the appeal, this miscellaneous petition has been filed seeking for suspension of sentence and to enlarge him on bail.

3. Heard, Mr.M.R.Sivasubramaniam, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

4. The learned counsel for the petitioner submitted that the petitioner is innocent and he is not involved in any offence; he has got substantial grounds for appeal and there is every likelihood to get a reversal judgment in the appeal; it is further submitted that the key witnesses are not helpful to the case of the prosecution because PW.2 turned hostile and PW.1 and PW.3 are only chance witnesses; the saree which is said to have been used for occurrence was recovered only on the next day; PW.1 and P.W.3 are the parents of the deceased and they are only interested witnesses; despite there are grounds for the appeal it cannot be heard immediately; the accused is in incarceration for nearly 7 months; hence the sentence imposed against the accused should be suspended and the petitioner should be released on bail.



5. On receipt of the notice, the learned Additional Public Prosecutor appearing for the respondent/State has vehemently opposed to suspend the sentence. On instructions he submitted that the learned Sessions Judge has observed that the accused could not offer any explanation for the death of his wife nor has he stated any reasons for the unnatural death of the deceased. He further submitted that the offence committed by the accused is a heinous one and the judgment of the sessions Court was passed only on 22.03.2021. By so stating he vehemently opposed to suspend the sentence.

6. The deceased is none other than the wife of the accused. It is submitted by the learned Additional Public Prosecutor that at the time of the occurrence there was no one at home except the accused and the deceased. The learned trial Judge has also made an observation that the accused did not give an explanation as to the death of his wife nor had he proved that at the time of occurrence, there was a possibility for the outsider to have access to his house. However the learned counsel for the petitioner submitted that the evidence of PW.1 and PW.3 is not reliable, as they are interested witnesses and PW.2 has turned hostile. If the learned counsel for the petitioner is confident about the grounds for appeal, it is always open to him to request for an early hearing. In such case, we are ready to take up the appeal and give it an early disposal.

7. The judgment of the lower Court has been passed only on 22.03.2021. The admission of the appeal does not guarantee an automatic entitlement for suspending the sentence. Though it is true that in some cases we suspended the sentence considering the delay in taking up appeal for hearing, it cannot be applied unanimously to all cases. Various considerations have to be taken into account while considering these kinds of petitions. In this connection, it is worthwhile to refer to a judgment rendered by the Hon'ble Supreme Court of India 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)

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8. On perusal of the records it is seen that both the accused and the defacto complainant's family are residing in the same street. It is quite possible for the accused to intimidate the defacto complainant by making use of his proximity.

9. In view of the reasons stated above, we are not convinced to suspend the sentence and release the accused on bail. However we would like to impress that it is always open to the learned counsel for the appellants to request for an early hearing of the appeal and for which this Court would try to accommodate.

In the result this Criminal Miscellaneous Petition in CrI.MP.No.8973 of 2021 is **dismissed**.

-sd/-
29/10/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FAST TRACK MAHILA COURT), TIRUVARUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
NEEDAMANGALAM POLICE STATION,
THIRUVARUR DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, THIRUCHIRAPALLI.

Copy To:

THE RECORD KEEPER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.



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

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

Order

in
CRL MP.8973/2021

in
CRL A.416/2021

Date :29/10/2021

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TA-15/11/2021