

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

CrI.M.P.No.8068 of 2020

in

CrI.A.No.501 of 2020

Ramachandran

... Petitioner

Vs.

State Rep. By
The Inspector of Police,
Mandharakuppam Police Station,
Cuddalore District.
(Crime No.222 of 2017)

... Respondent

PRAYER: This Criminal Miscellaneous Petition is filed under Section 389(1) and 439 of the Code of Criminal procedure, to suspend the sentence and grand bail to the petitioner / appellant for the conviction and sentence imposed in S.C.No.185 of 2019, dated 28.09.2020, on the file of the IIIrd Additional District and Sessions Judge, Cuddalore at Virudhachalam.

For Petitioner : Mr.K.Gandhi Kumar

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

O R D E R

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner in S.C.No.185 of 2019, on the file of the learned IIIrd Additional District and Sessions Judge Cuddalore at Virudhachalam and enlarge the petitioner on bail, pending disposal of the Criminal Appeal in C.A.No.501 of 2020, on the file of this Court.

2. The petitioner, who is an accused in S.C.No.185 of 2019, was convicted for the offence under Section 294(b) of IPC., and imposed a fine of Rs.100/-, in default, to undergo Simple Imprisonment for one week; and sentenced to undergo Rigorous Imprisonment for 1 year (each count), for the offence under Section 324 of IPC (2 counts) and sentenced to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.1000/-, in default, to undergo Simple Imprisonment for three months, for the

offence Section 304(i) IPC., by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam, by a Judgment, dated 28.09.2020. Aggrieved over the same, the petitioner has preferred the present Criminal Appeal.

3. The gist of the case is that P.W.1 is the complainant and one of the injured, the deceased Sivabalan is brother of P.W.1; P.W.2 is the paternal uncle of P.W.1 and injured; P.W.3 is eye-witness to the occurrence; P.W.4 is hearsay witness. P.W.2's wife - Senthamilselvi came to her parental home, month prior to the occurrence. On 12.09.2017, at about 8.00 p.m., when P.W.2 made an attempt to bring his wife Senthamilselvi from her parental home, he could not succeed and came back alone, at about 10.00 to 10.30 p.m., P.W.1, his brother Sivabalan and P.W.2 were discussion the same, in front of the house of P.W.2. At that time, the brother of Senthamilselvi, one Ramachandran, came there in a two wheeler, bearing Registration No.TN-91-W-3898 (Bajaj C.T.100), stopped the vehicle, took a knife from the vehicle's tank cover, stabbed P.W.2, on the left side of the head. He also stabbed Sivabalan on his left side, stomach and left elbow with a knife, P.W.1 made an attempt to rescue his brother, he was also attacked, on hearing screaming noises, P.W.3 / Manimaran and one Chandran came there. Immediately, the accused fled away from the scene of occurrence.

4. The charges framed against the petitioner / accused was explained and read over to him and when questioned about the same, he denied the charges. Hence, trial proceeded against him.

5. On the side of the prosecution, 16 Witnesses examined as P.W.1 to P.W.16 and 17 documents marked as exhibits Ex.P1 to Ex.P17 and 15 Material Objects marked as M.O.1 and M.O.15. On the side of the accused, no oral or documentary evidence was marked.

6. Mr.K.Gandhi Kumar, the learned counsel appearing for the petitioner / accused would submit that P.W.3 is not an eyewitness to the occurrence. P.W.3 clearly admit during cross-examination that his house is situated 3 k.m., away from the scene of occurrence and only after hearing the scream noise, he came to the occurrence place. Hence, no reliance can be placed on his evidence. P.Ws.1 to 3 are close relatives of the deceased and their evidence cannot be accepted in convicting the petitioner, they are doubtful and interest unreliable evidence in the eye of law. The prosecution failed to prove the arrest, confession and recovery. The medical evidence is contradictory to the eyewitness, P.W.1 deposed in his cross-examination that knife shown to him was different. He did not identify the knife / M.O.2. Further, the prosecution failed to prove that the blood stain found in the knife was the same blood group as that of the deceased. The recovery witness P.W.8 not identified the knife, M.O.2 in a fabricated material and it was manipulated and protected as a case property. Further, there was enormous delay in lodging the complaint (Ex.P1) and FIR (Ex.P9) reaching the Court. The person, who registered the FIR / P.W.15 not given any

explanation for the delay. P.W.15 did not say how the FIR was sent to the Court. Hence, the FIR could not have been registered at 5.30 A.M., on 13.09.2017.

7. Per contra, the learned Additional Public Prosecutor appearing for the State vehemently opposed the suspension of sentence / bail application and submitted that the prosecution proved its case beyond reasonable doubt. The trial Court held the petitioner / accused guilty for the aforesaid offences. The trial Court, after considering the entire evidence in right perspective, convicted the appellant. Therefore, no case for suspension of sentence is made out. Hence, he prays for rejection of the application seeking suspension of sentence.

8. This Court heard the submissions made by the parties and perused the relevant records.

9. In this case, P.W.1 is the brother of the deceased; P.W.2 is his uncle; P.W.3 is a neighbour, who are projected as eyewitnesses. P.W.1 admits that there was no light burning in his house at that time and in the front yard, Knife, Aruvamanai, stick and other articles are kept in the open yard where the scuffle took place. He states that the petitioner came there, questioned his brother-in-law (P.W.2) with regard to picking fight with his sister and chasing her out of the matrimonial home often. The fight was between the petitioner and P.W.2. At that time, P.W.1, P.W.2 and the deceased attacked the petitioner. There was exchange of blows and they had scuffle each other rolled on the floor. At that time, one of the articles available could have accidentally pierced the deceased on his ribs. P.W.1 could not identify M.O.2 / Knife, which is used in stabbing the deceased. Further he admits that the petitioner had not come for any fight with his brother and petitioner had not stabbed his brother. P.W.2 having another marriage and living with another lady is admitted by P.W.1. He also admits that he was in Mumbai at that point of time. P.W.2 / the brother-in-law of the petitioner admits that there was some misunderstanding with his wife and after the child birth to he had taken any steps to bring back his wife to the matrimonial home. He admits that there was commotion and exchange of blows between the petitioner, P.W.1, P.W.2 and the deceased. He categorically states that there was no intention of any murder and everything took place is a heat of passion. The presence of P.W.3 in the scene of occurrence is highly doubtful. He had not accompanied with the injured to the hospital. P.W.5 is a relative of P.W.1 and P.W.2, who said to have identified the accused. The petitioner was arrested in the presence of P.W.8. P.W.8 is another relative, recording of confession and recovery shown are doubtful. P.W.8 admits that there is variance in M.O.2 / Knife produced at the drawing found in the recovery mahazar. There has been a delay in lodging the complaint. Further, the complaint reached the Court belatedly, no reason has been given to the same. The usage of M.O.2 / Weapon in the occurrence is highly doubtful. The medical evidence and ocular evidence are contradictory. The trial Court had acquitted the

petitioner for the offence under Section 506(ii) of IPC., for the reason that there is no evidence that the petitioner had threatened the witnesses showing the knife. The occurrence had taken place at night hours, presence of light and in aid of the same, the occurrence properly viewed by P.W1 to P.W.3 has not been stated by the witnesses. On the other hand, scuffle, exchange of blows, rolling of accused, deceased and witnesses are admitted, in view of the same accident causing of injury cannot be ruled out.

10. In view of the above, finding infirmities in the prosecution case and arguable points involved in the appeal, further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the Petitioner herein is entitled to the relief of grant of suspension of sentence.

11. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Neyveli, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of English Calendar Month, at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-
27/01/2021

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

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

TO

1 THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CUDDALORE AT VIRUDHACHALAM.

2 THE DISTRICT MUNSIF-CUM-JUDICIAL MAGISTRATE,
NEYVELI.

3 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
MANDHARAKUPPAM POLICE STATION,
CUDDALORE DISTRICT.

+1C.C. to M/S.K.GANDHI KUMAR Advocate on payment of
necessary charges SR NO.915

Order

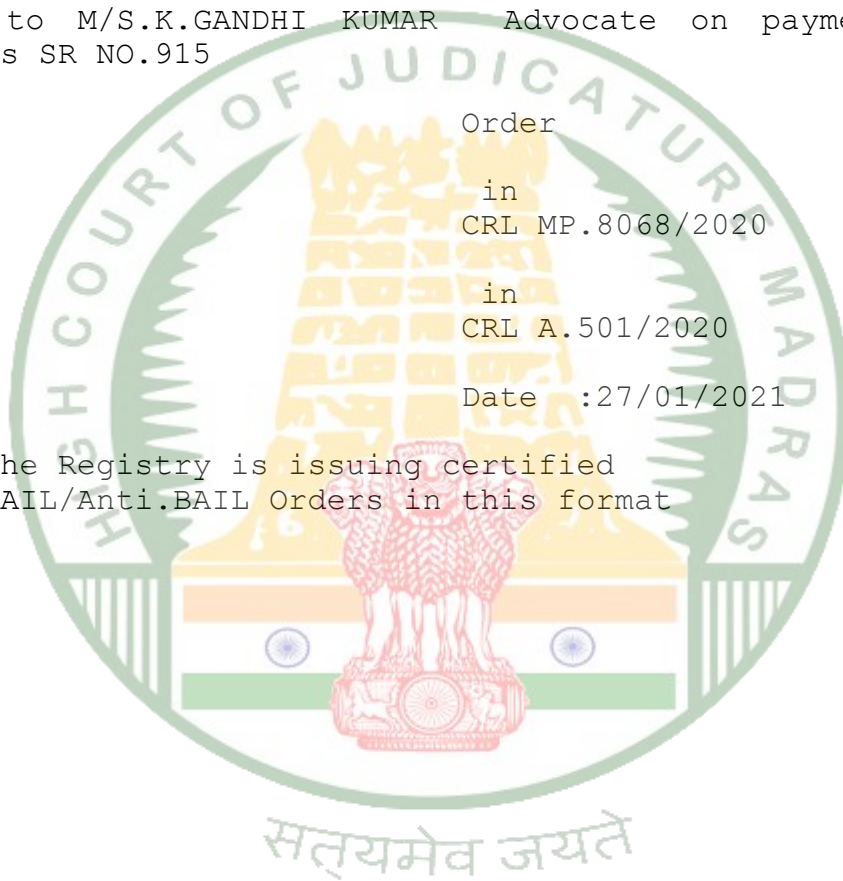
in
CRL MP.8068/2020

in
CRL A.501/2020

Date :27/01/2021

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MK:04/02/2021



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