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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.10.2021
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.10152 of 2021

in

Crl.A.No.187 of 2021

Maina @ Mainavathy @ Thaila @ Thailammal Petitioner/A-1

Versus

The State represented by
The Inspector of Police,
Attiyampatty Police Station,
Salem District.
(Crime No.105 of 2018)

.... Respondent/Respondent

Prayer: Criminal Miscellaneous Petition is filed under Section 374(2) Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in Special Sessions Case No.189 of 2018, dated 24.03.2021 on the file of the Sessions Judge, Mahila Court, Salem and enlarge the petitioner on bail pending disposal of the Criminal Appeal in C.A.No.187 of 2021.

For Petitioner : Mr.W.Elamyles Gandhi

For Respondent : Mr.R.Muniyapparaj,
Addl. Public Prosecutor (crl.side)

ORDER

R.N.MANJULA, J.

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner/A-1 by judgement and order dated 24.03.2021 passed in S.C.No.189 of 2018 on the file of the learned Sessions Judge, Mahila Court, Salem and to enlarge the petitioner on bail pending disposal of the appeal.



2. The petitioner, who is arrayed as A-1 in S.C.No.189 of 2018 before the Sessions Judge, Mahila Court, Salem, was convicted and sentenced as follows on 24.03.2021:

S.No.	Provision under which convicted	Sentence
1	Section 302 IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment.
2	Section 201 r/w 302IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

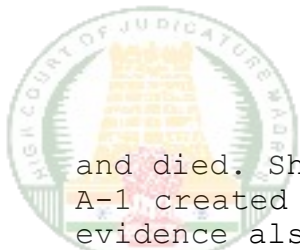
The aforesaid sentences were ordered to run concurrently.

3. Challenging the above conviction and sentence, the petitioner (A1) has filed Crl.A.No.187 of 2021 along with the miscellaneous petition for suspending the sentence and releasing the accused on bail.

4. Heard Mr. W.Elamylen Gandhi, learned counsel for the petitioner (A1) and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the respondent/State.

5. The case of the prosecution:

PW.1 and A-1 are husband and wife and their marriage was a love marriage and it was solemnized 8 years ago. They have two sons born out of the wedlock. A-2 is the friend of PW.1; when PW.1 and his wife A-1 were together at the parents house of A-1, A-2 used to visit them often. During such time, he developed an illegal intimacy with A-1. When PW1 knew about the illegal relationship between A1-and A-2 , he reprimanded A-1; A-1 stoutly denied the illegal intimacy with A-2 and she even attempted to commit suicide because PW.1 did not believe her version. Due to compelling situations, PW.1 shifted his residence from the parents' house of A-1; Even thereafter, A-1 continued her illegal relationship with A-2. Thereafter, A-2 went to Bangalore on employment. During that time, A-1 insisted A-2 to marry her and for which A-2 asked A-1 to finish her elder son. So, both the accused conceived an idea to kill the elder son of A-1; both the accused met near a fair price shop situated nearby the house of the witnesses and entered into a conspiracy to murder the children of A-1. A-2 suggested A-1 to kill her children by throwing them in a well and kill them by drowning in the well water; for which A-1 agreed. In pursuance of the conspiracy entered into between A-1 and A-2, on 05.03.2018 at about 7.00 a.m., A-1 took her elder son namely Sasikumar, near a well and pushed him down into the well and returned home. The child got drowned



and died. She informed the above matter to A-2. After returning home, A-1 created a scene as though her child was missing. A-1 screened the evidence also with the sole intention of escaping from the clutches of law. Hence the accused have committed the offences u/sec.120 (B) r/w 302, 201 r/w 302 IPC. The learned Sessions Judge has convicted the appellant for the offences under Section 302 & 201 r/w 302 IPC.

5.1. The prosecution case is based on the conspiracy between A-1 and A-2 who are said to have got illegal intimacy between themselves.

5.2. After the conclusion of the trial, on consideration of the same set of offence, A-2 was acquitted. There is no eye witness to the occurrence of the case based on circumstantial evidence. It is further submitted by the learned counsel for the petitioner that the trouser of the deceased boy was found near the well and hence the deceased who had attempted to wash after the nature's call, gone near the well and slipped down in to the well accidentally and drowned. According to the prosecution story, A-1 had agreed to murder her son only at the instigation and conspiracy she entered into with A-2. But A-2 himself got acquitted. The learned Sessions Judge has held that there is no evidence to prove the alleged conspiracy between A1 and 2.

6. On receipt of notice, the learned Additional Public Prosecutor appearing for the respondent/State has vehemently opposed to suspend the sentence by stating that the offence committed by the accused is heinous in nature and the learned Sessions Judge has correctly appreciated the evidence and rightly convicted the accused.

7. The petitioner (A1) has raised substantial grounds in the appeal which require a detailed appraisal. The petitioner (A1) has been in incarceration from 07.03.2018 (right from the date of her arrest by the respondent police). Further, the appeal may not be taken up for hearing immediately. In such view of the matter, this Court is of the view that the petitioner (A1) is entitled to the relief of suspension of sentence and bail.

8. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner (A1) on the following conditions:

(i) The petitioner (A1) 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 Sessions Judge, Mahila Court, Salem.

(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 petitioner (A1) shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner (A1) 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 she is not able to appear before the trial Court on any day, she 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 her absence, as directed by the trial Court.

-sd/-
29/10/2021

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,
MAHILA COURT, SALEM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ATTIYAMPATTY POLICE STATION,
SALEM DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON (SPECIAL PRISON FOR WOMEN),
COIMBATORE.



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

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+1 C.C. to M/S.S.N.ARUNKUMAR Advocate on payment of necessary
charges SR.NO.12209

Order

in
CRL MP.10152/2021

in
CRL A.187/2021

Date :29/10/2021

From 7.2.2001 the Registry is issuing certified
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RW 12/11/2021