



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

Friday, the Twenty Ninth day of October Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice S. SRIMATHY

CRIMINAL MISCELLANEOUS PETITION No.10936 of 2021

IN

CRL.A.No.226 OF 2020

SRIDHAR @ BABU

[ PETITIONER/APPELLANT ]

Vs

STATE REP. BY  
THE INSPECTOR OF POLICE,  
OOTY TOWN CENTRAL POLICE STATION,  
UDHAGAMANDALAM,  
THE NILGIRIS DISTRICT,  
CRIME NO.656/2009.

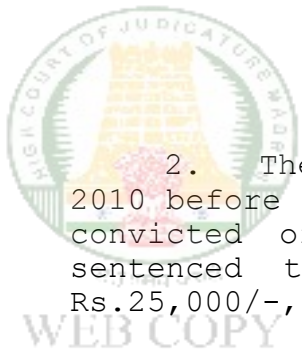
[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.226 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the learned Principal Sessions Judge, Coimbatore by a judgment dated 02.03.2020 in S.C.No.242 of 2010 and enlarge the petitioner on bail pending disposal of the above Crl.A.No.226 of 2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.226 OF 2020 on the file of the High Court and upon hearing the arguments of M/S.R.JOHN SATHYAN, Advocate for the petitioner and of M/S R.MUNIYAPPARAJ, GOVT.ADVOCATE (CRL.SIDE) on behalf of the Respondent the court made the following order:-

(Order of the Court was made by P.N.PRAKASH,J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 02.03.2020 in S.C.No.242 of 2010 on the file of the Principal District and Sessions Court, Coimbatore and to enlarge the petitioner on bail pending disposal of the above appeal.



2. The petitioner, who was the first accused in S.C.No.242 of 2010 before the Principal District and Sessions Court, Coimbatore, was convicted of the offence under Section 120(B) r/w 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/-, in default to undergo six months simple imprisonment.

3. Challenging the aforesaid conviction and sentence, the petitioner (A1) has filed Crl.A.No.226 of 2020 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.R.John Sathyan, learned counsel for the petitioner (A1) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. This is the second petition seeking suspension of sentence and bail and the first petition in Crl.M.P.No.4226 of 2020 in Crl.A.No.226 of 2020 was dismissed as withdrawn on 14.07.2020.

6. It is the case of the prosecution that the petitioner (A1) is a practising Advocate and he had financial dealings with the deceased Sekar, in which, the petitioner (A1) owed money to Sekar. When Sekar started asking the petitioner (A1) for return of the amounts, the petitioner (A1) is said to have conspired to liquidate him by engaging hirelings viz., Murali @ Signal Murali (A2), Karthikeyan @ Karthik (A3), Prabakaran @ Arokiya Jeyaprabakaran (A4), Sibu @ Sibu Peter (A5) and Alex @ Alexpandian (A6) and accordingly, on 27.06.2009 around 8.15 a.m., Sekar was done to death in broad daylight in his canteen.

7. Mr.R.John Sathyan, learned counsel for the petitioner (A1) submitted that the motive for the murder was not spoken to by C.Kumar (PW1) and N.Mahalakshmi (PW3) at the earliest point of time and that the prosecution had not proved that the petitioner had paid payments to the hirelings, inasmuch as, only a sum of Rs.2,000/- is said to have paid in favour of Dolphin Enterprises for the travel expenses of the assailants. He further submitted that the call detail records only show that the mobile phone was in the name of Uma Maheswari and that the trial Court had failed to appreciate the alternative theory that was projected by the defence viz., one Mohammed Hasan, Anees Ahamad, Rajan, friends of N.Mahalakshmi (PW3), wife of Sekar, were talked for long hours over her mobile phone and they probably would have set up the hirelings to commit the offence.

8. Per contra, the learned Additional Public Prosecutor took us through the various findings of the trial Court and submitted that the prosecution has established that the petitioner (A1) had given some jewels to Richard (PW10) for raising money to engage hirelings. He also took us through paragraph no.43 of the trial Court judgment and submitted that the trial Court has given a clear finding about the involvement of the petitioner (A1) in the offence.



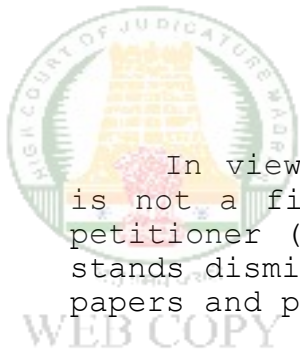
9. We carefully considered the rival submissions. In this case, on a fine morning, the hired assailants entered into the canteen of Sekar and hacked him to death. As the investigation progressed, it came to light that the petitioner (A1) herein had conspired with the hirelings to eliminate Sekar, as he was pestering the petitioner (A1) to return the loan amounts.

10. Just because the motive for the offence was not available to the police immediately after the occurrence, the testimonies of the motive witnesses cannot be discarded and only during the course of hearing of the appeal, can this Court appreciate their evidences.

11. Similarly, the evidentiary value of payment of Rs.2,000/- and the call detail records of the accused can be determined only in the final hearing. The trial Court has returned a clear finding that the petitioner (A1) had conspired with the other accused to eliminate Sekar, pursuant to which, Sekar was hacked to death in broad daylight in his canteen.

12. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), has considered Kashmira Singh v. State of Punjab and 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."



In view of the above reasoning, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A1) and accordingly, this criminal miscellaneous petition stands dismissed. The Registry is directed to prepare the typed set of papers and post the main appeal for final disposal, expeditiously.

-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 PRINCIPAL DISTRICT AND  
SESSIONS COURT, COIMBATORE.

2 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR,  
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,  
OOTY TOWN CENTRAL POLICE STATION,  
UDHAGAMANDALAM, THE NILGIRIS DISTRICT.

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

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

Order

in

CRL MP.10936/2021

IN

CRL.A.No.226 OF 2020

Date :29/10/2021

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

RVR 09/11/2021