



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Fourth day of November Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION No.11105 of 2021

IN

CRL.A.NO.211/2021

MANSOOR AHMAD

[PETITIONER/APPELLANT]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
BHAVANI POLICE STATION,
ERODE DISTRICT
(CRIME NO.465/2009)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Suspend the sentence of Imprisonment imposed by the Learned IV-Additional District and Sessions Judge, Erode at Bhavani in Sc.No.164/2010 by the judgment dated 11.03.2021 and enlarge the petitioner on bail pending disposal of the above said Crl.Appeal and thus render justice

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S K.P.SURESH KUMAR, Advocate for the petitioner and of MR.R.MUNIYAPPARAJ ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondents the court made the following order:-

[Order of the Court was made by R.HEMALATHA, J.]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 11.03.2021 passed in S.C.No.164 of 2010 on the file of the IV Additional District and Sessions Court, Erode at Bhavani and to



enlarge the petitioner on bail pending disposal of the appeal.

2.The petitioner, the second accused in S.C.No.164 of 2010 before the IV Additional District and Sessions Court, was convicted for the offences under Section 302 r/w. 109 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- in default, to undergo six months rigorous imprisonment. Challenging the same, the petitioner filed Crl.A.No.211 of 2021 with the present petition for suspension of sentence and bail.

3.Heard Mr.K.P.Suresh Kumar, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

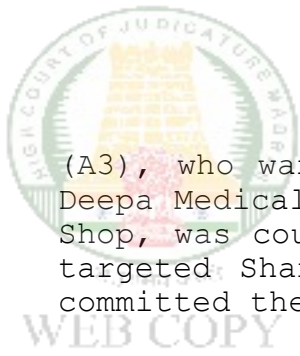
4.It is the case of the prosecution that R.Prabhu (A1) and M.Mansoor Ahmad (A2) had attacked the deceased Shanmugam by throwing acid on him on 14.06.2009 around 08.30 p.m. and Shanmugam succumbed to injuries.

5.It is the contention of the learned counsel for the petitioner (A2) that even as per prosecution theory it was a case of mistaken identity and therefore, Section 302 cannot be attracted. It is also submitted by him that the word "Apollo" written in a piece of paper by the deceased Shanmugam and handed over to his wife was not properly investigated at all and that there were discrepancies in the evidence of K.Vadivel (P.W.3) and K.S.Mahalingam (P.W.5) and they have not also identified the accused. According to the learned counsel for the petitioner the extra judicial confession of the petitioner (A2) to P.Muthusamy (P.W.8), the Village Administrative Officer, deserves to be rejected as the office is located next to the police station.

6. Per contra, the learned Additional Public Prosecutor refuted all the submissions made by the learned counsel for the petitioner.

7. At the outset, it may be observed that this is the second petition filed for suspension of sentence. The earlier petition in Crl.M.P.No.5483 of 2021 was dismissed by this Court on 27.08.2021. The version of the prosecution is that Prabhu (A1) was in relationship with Revathi (A3). Prabhu (A1) had reasons to doubt Revathi (A3) who in fact was in touch with one Senthilkumar of Deepa Medical Shop. However, when Prabhu (A1) confronted with Revathi (A3) she reportedly mentioned the name of the victim Shanmugam which led Prabhu (A1) and the petitioner (A2), who are friends, to attack Shanmugam with acid causing his death. In the orders in Crl.M.P.No.5483 of 2021 it is observed as follows:

"11. In this case, the extrajudicial confession of the petitioner (A2) to Muthusamy (PW8), VAO, clearly sets out the game plan of the accused and also the manner, in which, Shamugam was murdered. This is not a case of mistaken identity, rather a case, in which, Revathi



(A3), who wanted to conceal her affair with Senthil Kumar, owner of Deepa Medical Shop, had told that Shanmugam, owner of Kamatchi Medical Shop, was courting her. Therefore, Prabhu (A1) and the petitioner (A2) targeted Shanmugam, who was the owner of Kamatchi Medical Shop and committed the dastardly act of throwing acid on him and murdering him.

12. Whether the extrajudicial confession should be accepted or not is an aspect, which can be seen only during the final hearing of the case and not in this bail petition. Similarly, the discrepancies and the contradictions in the evidences of various witnesses that were pointed out by the learned counsel for the petitioner cannot be considered in this petition.

13. 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 vs. 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."

8. In view of the above, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

24/11/2021

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

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1 THE IV ADDITIONAL DISTRICT AND
SESSIONS COURT, ERODE AT BHAVANI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE,
BHAVANI POLICE STATION,
ERODE DISTRICT

C.C. to M/S K.P.SURESH KUMAR Advocate on payment of necessary
charges

Order

in
CRL MP.11105/2021
in
Crl.A.No.211/2021

Date :24/11/2021

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APN 26/11/2021