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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.M.P.No.11900 of 2021

in CrI.A.No.202 of 2021

1.Sathish @ Sathishkumar .. Petitioners/AA 1 to 3, 7 & 8
2.Majaas Bhai @ Majaas
@ Mohammed Majaasudeen
3.Sahayu
4.Jahir Usen
5.Arunkumar

Vs.

State represented by ..Respondent/Complainant
The Inspector of Police,
G-1, Vepery Police Station,
Vepery, Chennai - 107.

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioners by judgment and order dated 03.02.2021 passed in S.C.No.175 of 2017 on the file of the VI Additional Sessions Court, Chennai and to enlarge the petitioners on bail pending disposal of the appeal.

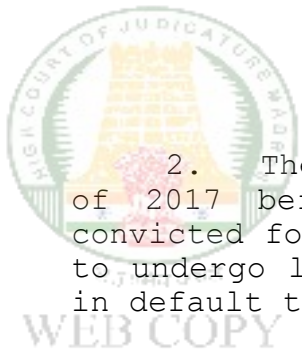
For Petitioners : Mr.G.Prabhakaran

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

(Made by P.N.PRAKASH, J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 03.02.2021 passed in S.C.No.175 of 2017 on the file of the VI Additional Sessions Court, Chennai and to enlarge the petitioners on bail pending disposal of the appeal.



2. The petitioners, who were AA 1 to 3, 7 and 8 in S.C.No.175 of 2017 before the VI Additional Sessions Court, Chennai, were convicted for the offence under Section 302 r/w 149 IPC and sentenced to undergo life imprisonment and to pay of fine of Rs.10,000/- each, in default to undergo one year rigorous imprisonment, each.

3. Challenging the above conviction and sentence, the petitioners (AA 1 to 3, 7 and 8) have filed Crl.A.No.202 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.G.Prabhakaran, learned counsel for the petitioners (AA 1 to 3, 7 and 8) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the first petitioner (A1) had a civil dispute with the deceased Bala and therefore, in order to eliminate Bala, the first petitioner (A1) engaged the services of AA2 to 8. Accordingly, on 30.04.2016, around 12.00 noon, while Bala was going in his motorcycle, AA2 to 8 stopped him in the road and indiscriminately attacked him with the cricket bat. Bala succumbed to the injuries.

6. The evidence as against the petitioners 1 to 3 (AA 1 to 3) appears very incriminating.

7. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**¹, has considered **Kashmira Singh vs. State of Punjab**² 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."

¹ (2008) 5 SCC 230

<https://hcservices.ecourts.gov.in/hcservices/>

² 1977 SCC (Cri) 559



8. In view of the above and taking into consideration the gruesome manner, in which, Bala was done to death in broad daylight in a public road by hirelings engaged by the first petitioner (A1), we are of the view that this is not a fit case to grant suspension of sentence and bail to the petitioners 1 to 3 (AA 1 to 3) and accordingly, this criminal miscellaneous petition stands **dismissed qua the petitioners 1 to 3 (AA 1 to 3)**.

9. As regards the petitioners 4 and 5 (AA 7 and 8), in paragraph no.26 of the judgment of the trial Court, the following findings have been returned:

"26. Now let us analyze what is the role of A7 and A8? According to the prosecution, A7 and A8 were present at the place of occurrence watching whether anyone intervenes while they were attacking the deceased. There is no direct evidence. None of the eye witness or the witnesses who were present in the place of occurrence did not notice the presence of the accused A7 and A8. Only in the confession statement of the accused 2 to 6, the presence of A7 and A8 is mentioned. A2 had a criminal conspiracy with A3 and A3 arranged A4 to A8 to complete the crime. The criminal conspiracy is meeting of mind. It is done in secret. There cannot be any direct evidence. There is no enmity between A2 to A6 to drag A7, A8 into the scene. As per Section 27 of the Indian Evidence Act, the confession of the accused A2 to A6 is enough to prove that A7 and A8 were present in the place of occurrence. A7 and A8 were having common intention to culminate the deceased."

10. A reading of the above shows that the petitioners 4 and 5 (AA7 and 8) have been convicted only on the confession of the other accused and there is no other material against them. The learned Additional Public Prosecutor submitted that there is no previous cases against the petitioners 4 and 5 (AA 7 and 8).

11. Accordingly, this criminal miscellaneous petition stands **allowed qua the petitioners 4 and 5 (AA 7 and 8)** and the sentence of imprisonment is suspended and bail is granted to the petitioners 4 and 5 (AA 7 and 8) on the following conditions:

- (i) The petitioners 4 and 5 (AA 7 and 8) shall execute a bond for a sum of Rs.25,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the VI Additional Sessions Court, Chennai;



- (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

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- (iii) The petitioners 4 and 5 (AA 7 and 8) shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioners 4 and 5 (AA 7 and 8) 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 they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.

-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

1 THE VI ADDITIONAL SESSIONS JUDGE,
CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
G-1, VEPERY POLICE STATION,
VEPERY, CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI.

+2 C.C. to M/S. G.PRABHAKARAN Advocate on payment of necessary charges SR.NO.13337

Order
in
CRL MP.11900/2021
in
CRL A.202/2021
Date :24/11/2021

From 7.2.2001 the Registry is issuing certified
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