



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Twenty Fifth day of February Two Thousand and Twenty One

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PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.723 of 2021
in
CRL A(MD)No.218 of 2020

PITCHU MANI @ PITCHAI MANI

... APPELLANT/ACCUSED No.1

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME No.168/2013

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed by the learned I Additional District Sessions Judge, Tirunelveli District in S.C.No.656 of 2016 vide his judgment dated 04/03/2020 pending the disposal of the main Criminal Appeal.

PRAYER IN CRL A(MD) No.218 of 2020:

Pleased to call for the entire records pertaining to the judgment delivered by the learned I Additional District Sessions Judge, Tirunelveli in S.C.No.656 of 2016 vide judgment dated 04.03.2020 and set aside the same and consequentially acquit the appellants from all the charges mentioned in the said case.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.ANAND, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

Reserved on : 19.02.2021

Pronounced on : 25.02.2021

(Order of the Court was made by **G.ILANGO VAN, J**)

This Criminal Miscellaneous Petition is filed to suspend the sentence passed by the I Additional District Sessions Judge,
<https://hcservices.ecourts.gov.in/hcservices/>



Tirunelveli District, in S.C.No.656 of 2016, dated 04.03.2020, and enlarge the petitioner/Appellant on bail, pending disposal of the criminal appeal.

2. The deceased namely Edison and father of first accused namely Balasubramaniam were friends. During July 2011, Edison, the deceased was playing cards. The same was intimated to the police by the father of the first accused. Because of the enmity Edison caused injury on Balasubramaniam left hand. In respect of which a case in crime number 310 of 2011 under sections 120 B 294, 324 and 506 (ii) was registered against the deceased. Because of the enmity the first accused, the petitioner herein conspired with the second accused to do away with the deceased. In pursuance of same the second accused brought the deceased on 14.6.2013 at about 12 noon to Tasmac wine shop. At about 12:30 PM the first accused came to the place of occurrence and cut the deceased indiscriminately all over his body by using aruval, Edison died on the spot. Later both accused fled away from the place of occurrence.

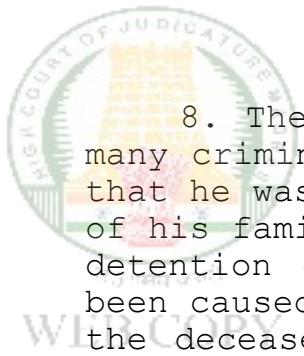
3. Before the trial court the first accused namely the petitioner herein was charged under sections 120 (B), 302 IPC and the second accused was charged under section 120(B), 302 read with 34 IPC. At the time of the trial the prosecution examined 22 witnesses and marked 24 documents 8 material objects were exhibited, on the side of the accused no one was examined and no documents marked.

4. At the conclusion of the trial the trial court came to the conclusion that the offence under section 120 B was not made out but however the first accused namely the petitioner herein was convicted and sentenced to undergo imprisonment for life and fine amount of Rs.5000/- in default to undergo two years simple imprisonment was imposed, the second accused was also convicted and sentenced to undergo life imprisonment under section 302 read with the 34 IPC to undergo life imprisonment and a fine amount of Rs.5000/- in default two years simple imprisonment was awarded.

5. Challenging the conviction and sentence both accused preferred appeals, pending appeal the second accused was released on bail by suspending the sentence imposed on him.

6. The first accused filed this petition to release on bail by suspending the sentence.

7. It is the contention on the part of the learned counsel for the petitioner that the prosecution story that P.W.1 and P.W.2 have witnessed the occurrence, cannot be true, because even as per their own evidence the distance between house and the place of occurrence is about 16 km and their evidence that they travelled through this distance by a bicycle and went to the place of occurrence and

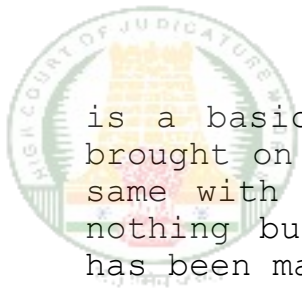


8. The next contention is that the deceased was involved in so many criminal cases and a rowdy and there is also evidence to show that he was detained under the Goondas act and in spite of that none of his family members chose to get him released by challenging the detention order. So he got several enemies and murder might have been caused by any one or more of the enemies. According to him that the deceased suffered more than 28 injuries so it would have been caused by many persons as spoken by the witnesses P.W.3 and P.W.4, more than one person would have been involved in the occurrence and so the story of the prosecution that only the petitioner cut the deceased indiscriminately with aruval repeatedly is not believable. So according to the petitioner some unknown persons as spoken by the above said persons would have caused the death of the deceased. Moreover there is no corresponding injury on the body of the deceased with connecting the overt act spoken by pwl. The next contention is that there is a delay in sending the first information report to the Judicial magistrate. According to him this creates doubt over the prosecution story.

9. Contra to this, the argument on the side of the learned additional Public Prosecutor namely, Mr. Anand raj, is that P.W.1 and P.W.2 are the natural eyewitnesses to the occurrence and motive is also been approved by the prosecution beyond all reasonable doubt and there is no reason for P.W.1 and P.W.2 to falsely implicate the petitioner in the occurrence. As spoken by P.W.1 and P.W.2 corresponding injuries were found in the body of the deceased. So according to him the judgement of conviction and sentence passed by the trial court is perfectly valid and no ground is made out by the petitioner for suspending the sentence.

10. As contended by the learned counsel for the petitioner, it is on record to show that the distance between the place of occurrence and the house of the deceased is more than 16 km and when the deceased was taken by the second accused, suspecting some rat, P.W.1 and P.W.2 followed them in a bicycle and when they reached the place of occurrence the first accused came to the place and caused cut injuries. No doubt the crossing 16 km in a bicycle and witnessed the occurrence is artificial in nature but, however, the other evidence to link the first accused to the occurrence is available. Only in pursuance of the disclosure statement the aruval which was alleged to have been used in the occurrence was recovered by the police with blood stains. How far the contradictions which are available in the case advance the case of the defence can be seen only at the time of the final hearing.

11. This petitioner filed an earlier application to suspend the sentence and release him on bail. The application was taken file as Crl.MP.(MD)No. 3703 of 2020. But on the date of hearing that application was withdrawn by the petitioner. This petition is filed within three months thereafter. Even though, there is no bar for



is a basic principle that change of circumstance must be clearly brought on record. Perusal of the earlier petition and comparing the same with the present petition shows that the present petition is nothing but a copy of the earlier petition. Verbatim reproduction has been made. Not even para number, page number are changed.

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12. So we are of the considered view that in the absence of any change of circumstance, we cannot entertain this petition and deserves dismissal. On merit also, we find no reason for suspending the sentence since as already noticed more than 28 grievous injuries have been inflicted upon the deceased over a simple dispute and considering the over act of the petitioner, we are not inclined to suspend the sentence and release the petitioner on bail. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
25/02/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE I ADDITIONAL DISTRICT SESSIONS JUDGE,
TIRUNELVELI.
2. THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI TIRUNELVELI DISTRICT.
3. THE INSPECTOR OF POLICE
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.723 of 2021
in
CRL A(MD) No.218 of 2020
Date : 25/02/2021

dss
AE/SMA/SAR-IV (02/03/2021) 4P / 5C