WEB COPY

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

Friday, the Twenty Fifth day of June Two Thousand and Twenty One

PRESENT

The Hon'ble Mr.Justice K.KALYANASUNDARAM
and
The Hon'ble Mr.Justice B.PUGALENDHI

Crl.M.P.(MD) Nos.1807 and 2088 of 2021
in
Crl.A.(MD) Nos.493 and 619 of 2019

SENTHILKUMAR
(NOW CONFINED AT CENTRAL
PRISON, PALAYAMKOTTAI) ... PETITIONER/APPELLANT
IN CRL MP(MD)No.1807/2021
IN CRL A (MD)No.493/2019

SHENBAGARAJ ... PETITIONER/ACCUSED No.2
IN CRL MP(MD)No.2088/2021
IN CRL A (MD)No.619/2019

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
KOVILPATTI EAST POLICE STATION,
KOVILPATI,
TUTICORIN DISTRICT.
(CRIME No.1105/2013) ... RESPONDENT/RESPONDENT
IN BOTH THE PETITIONS

Prayer in CRL MP(MD)No.1807/2021 in CRL A (MD)No.493/2019 :
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the Execution of Sentence by granting bail in S.C.No.369 of 2015, dated 13.09.2019 on the file of the First Additional District and Sessions Judge, Tuticorin till the disposal of the Criminal Appeal.

Prayer in CRL MP(MD)No.2088/2021 in CRL A (MD)No.619/2019 :
To enlarge the petitioner on bail by suspending the sentence imposed by the learned I-Additional District in S.C.No.369 of 2015 vide his judgment dt.13.9.2019 pending the disposal of the main Criminal Appeal pending on the file of this Hon'ble Court.

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

WEB COPY

Prayer in CRL A(MD)No.493/2019 :
To call for the records from the lower court and to duly set aside the judgment passed by the learned I Additional District and Sessions Judge, Tuticorin in S.C.No.369 of 2015, dated 13.09.2019.

Prayer in CRL A(MD)No.619/2019 :
To call for the entire records pertaining to the Judgment delivered by the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District in S.C.No.59 of 2016 vide his Judgment dated 13.09.2019 and set aside the same and consequently acquit the appellant.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for Mr.PRABHU.K, Advocate for the petitioner in CRL MP (MD) No. 1807/2021 IN CRL A (MD)No.493/2019 and Mr.G.KARUPPASAMY PANDIAYAN, Advocate for petitioner in CRL MP (MD) No. 2088/2021 IN CRL A (MD)No.619/2019 and of Mr.S.RAVI. Standing Counsel on behalf of the Respondents in both petitions, the Court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The accused Nos.1 to 3 in S.C.No.396 of 2015 were found guilty for the charges under Sections 302, 302 r/w 34 IPC, convicted and sentenced to undergo life imprisonment by the learned I Additional District and Sessions Judge, Tuticorin. Assailing the order of conviction and sentence, the accused Nos.2 and 3 have preferred the above appeals in Crl.A(MD)Nos.619 and 493 of 2019 respectively. Pending appeals, they seek suspension of sentence.

2.The case of the prosecution is that the accused and the deceased are residents of Kovilpatti. The complainant party was making pig meat. In that process, huge smoke emanated and caused health issues. P.W.6 lodged the complaint against the accused with the Municipality as well as the Police. Pursuant thereto, the accused were called for enquiry by the Health Inspector of Municipality and Inspector of Police. In this regard, there was a prior enmity between the accused party and the complainant party. It is the further case of the prosecution that on 05.11.2013, the deceased were informed by the accused that the matter could be settled amicably. Believing the representation of the accused, at 09.15 a.m on 06.11.2013, the deceased proceeded to the house of the accused No.3. It is alleged that the accused way laided the deceased and attacked them indiscriminately with aruval and caused their death.

3.The prosecution projected P.Ws.1 to 3 as eyewitnesses to the incident. P.W.1 is the son of the deceased No.1. P.W.2 is the brother of the deceased No.2 and P.W.3 is the brother-in-law of the deceased No.2. The prosecution in order of prove the charges had

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

let in oral and documentary evidence. On appreciation of evidence, the Trial Court found all the accused guilty, convicted and sentenced as mentioned above.

4.Mr.V.Karthirvelu, learned Senior Counsel appearing for the petitioner/A3 and Mr.G.Karuppasamy Pandian, learned counsel appearing for the petitioner/A2 would urge that the prosecution mainly relies on the testimony of P.W.1 to P.W.3. It is their submission that P.W.1 to P.W.3 are interested witnesses and their presence in the scene of occurrence at the relevant point of time is highly doubtful. In support of their argument, attention of this Court was drawn to the testimony of P.W.1 to P.W.3. They pointed out that there are material contradictions in the evidence of P.W.1 to P.W.3. P.W.1 has stated that the bodies of the deceased were removed from the scene of occurrence at 10.30 a.m, but P.W.2 says that the bodies were removed at 10.45 a.m. The Inquest Report shows that the bodies of the deceased were lying in the scene of occurrence till 3.15 p.m. The presence of P.W.3 was spoken by P.W.1 and P.W.2.

5.It is next contended that there is an unexplained delay of 6 hours in reaching the FIR to the Court. According to them, the distance between the place of occurrence and the Police Station is 1½ k.m. Though the complaint was lodged at 09.45 a.m, it reached the Court at 06.20 p.m. According to the learned counsel, the delay occurred for the reason that it was not registered at 09.45 a.m and the case was registered belatedly after deliberation to falsely implicate the accused. Adding further, they contended that as per prosecution, the accused were arrested at 04.30 p.m on the date of occurrence, but P.W.1 to P.W.3 deposed that they saw the accused in the Police Station at 12.00 p.m along with weapons, hence, the story of arrest, confession and recovery are false. It is also stated that P.W.1 to P.W.3 though they are close relatives of the deceased, no attempt was made to save them. They are further pointed out that as per the prosecution, on the date of occurrence, A1 called the deceased for compromise talk, but P.W.1 in his evidence, stated that one Pandi informed the deceased to come for compromise, however, the said Pandi was not examined by the prosecution and they have not come to the Court with clean hands. Hence, the accused are entitled for suspension of sentence.

6.On the other hand, Mr.S.Ravi, learned Standing Counsel representing the State would argue that this is the case of double murder, that too, the occurrence had taken place in a day light. According to the Standing Counsel, merely because P.W.1 to P.W.3 are the interested witnesses, but on that score, their evidence cannot be discarded, since they are natural witnesses and they have consistently deposed about the motive and overt acts attributed to the accused. He would further state that P.W.17 Constable attached to the respondent Police Station has explained the delay in reaching the FIR to the Court and hence, the petitioners are not entitled for suspension of sentence.

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

WEB COPY

7.Heard the rival submissions and perused the materials available on records.

8.In the matter on hand, it is an admitted fact that the accused party and the complainant party are belonging to the same area. The prosecution would state that the accused party are making pig meat, which causes pollution in the area and hence, P.W.6 lodged the complaint with the local Municipality as well as the Police. It is not in dispute that P.W.1 to P.W.3 are close relatives of the deceased. The contradictions in their evidence with regard to the removal of the dead-bodies from the scene of occurrence mentioned above creates a reasonable doubt. Presence of P.W.3 at the relevant point of time is not spoken by P.W.1 and P.W.2. It is to be noted that admittedly, there is a delay of about 6 hours in reaching the FIR to the Court. P.W.17, Constable attached to the Kovilpatti West Police Station stated that within a period of 25 minutes, they can reach the Court from the Police Station. However, while explaining the delay, P.W.17 deposed that since the Judicial Magistrate, Kovilpatti was on leave, he had taken the FIR to the Judicial Magistrate, Tuticorin. He started from the Police Station at 12.30 p.m and reached the Court at 02.00 p.m, however, from 02.00 p.m to 06.20 p.m, he was waiting in the Court. Whether the explanation offered by P.W.17 could be accepted or not can be decided only at the final disposal of the above appeals. That apart, we can see some arguable points in favour of the petitioners in these appeals.

9.Considering the above aspects, we are of the opinion that the petitioners are entitled for suspension of sentence during pendency of these appeals. Accordingly, these criminal miscellaneous petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on each of them executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate No.I, Kovilpatti.

ii. The petitioners shall reside at Dharmapuri and appear before the Athiyamankottai Police Station at 10.30 a.m on every Monday until further orders.

iii. On any particular date, if the petitioners are not able to appear, leave is granted to the petitioners to file an application under Section 317 Cr.P.C. and appear before the committal Court on any

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

WEB COPY

other day, as determined by the committal Court, in lieu of the day on which they would absent.

sd/-
25/06/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
   TUTICORIN.

2. THE JUDICIAL MAGISTRATE No.1, KOVILPATTI.

3. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
   THOOTHUKUDI DISTRICT.

4. THE SUPERINTENDENT,
   CENTRAL PRISON,
   PALAYAMKOTTAI.

5. THE INSPECTOR OF POLICE,
   KOVILPATTI EAST POLICE STATION,
   KOVILPATI, TUTICORIN DISTRICT.

6. THE INSPECTOR OF POLICE,
   ATHIYAMANKOTTAI POLICE STATION,
   DHARMAPURI.

7. THE ADDITIONAL PUBLIC PROSECUTOR,
   MADURAI BENCH OF MADRAS HIGH COURT,
   MADURAI.

ORDER IN
Crl.M.P.(MD) Nos.1807 & 2088/2021 IN
Crl.A.(MD) Nos.493 and 619 of 2019
Date :25/06/2021

SKN

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

TE/VR/SAR-I : 02/07/2021 : 5P/8C