



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

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

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The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice S.ANANTHI

CRL MP(MD) No.3389 of 2021
IN
CRL A(MD)No.601 of 2019

K.KANNAN

... PETITIONER/ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
COURTALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
CR.NO.59 OF 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 him on bail by suspending the sentence imposed by the learned Additional District and Sessions Judge, (Fast Track Court), Tenkasi, Tirunelveli District in S.C.No.341 of 2013 vide his judgment dated 19.08.2019 pending the disposal of the main criminal appeal pending on the file of this Hon`ble Court.

PRAYER IN CRL A(MD)No.601 of 2019:

To call for the entire records pertaining to the judgment delivered by the learned Additional District & Sessions Judge, (Fast Track Court) Tenkasi, Tirunelveli District in S.C.No.341 of 2013 vide judgment dated 19.08.2019 and set aside the same and consequently acquit the appellant honourably.

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.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by **V.BHARATHIDASAN., J**)

The petitioner herein is the sole accused in S.C.No.341 of 2013, on the file of the learned Additional District and Sessions Judge, Tenkasi, Tirunelveli District. The trial Court, on appreciation of evidence, held that the petitioner has committed the offence and convicted him for the offence under Section 302 IPC., and sentenced to under go life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one year rigorous imprisonment.



2. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

3. The case of the prosecution is that the deceased in this case Kuttalam is the wife of the petitioner. There was a frequent quarrel between the appellant and the deceased. On 14.02.2013, at about 2.30 p.m., there was a quarrel between them, and the appellant / accused attacked the deceased, she fell down, again kicked on her abdomen, she fainted, then the accused hanged her with the dupatta worn by the deceased. Hence, the crime was registration. The trial Court, after elaborate trial, convicted and sentenced the accused, as above. Now, challenging the same, the appeal is filed.

4. Mr. R. Anand, learned counsel appearing for the appellant submitted that it is a circumstantial evidence. The prosecution mainly relied upon the medical evidence to sustain conviction on the appellant, however, the medical evidence did not support the case of the prosecution. That apart, the petitioner has no bad antecedent and he is in jail for more than two years.

5. Mr. S. Ravi, the learned Additional Public Prosecutor appearing for the State opposing the bail application would submit that from the postmortem report it could be seen that the deceased sustained serious internal injuries, and it is a clear case of strangulation, the Doctor also clearly says that it is not case of suicide. He further stated that the occurrence place is inside the house of the deceased and under Section 106 of the Evidence Act, the burden is on the accused to give explanation for the cause of death, but absolutely, there is no explanation. Apart from that, the accused also involved in two theft cases. The trial Court, considering all those circumstances, has rightly convicted the accused and considering the gravity of the offence, it is not a fit case for granting suspension of sentence.

6. We have considered the rival submissions made and perused the materials available on records.

7. It is a case of circumstantial evidence. The prosecution mainly relying upon the medical evidence. A perusal of the medical evidence it could be seen that there is a contusion in the liver and spleen of the deceased. According to the appellant, there is a serious doubt whether it is a case of suicide or strangulation, and there is no other circumstantial evidence available. Considering all those circumstances, we are of the view that there are arguable points involved in the appeal. That apart, the appellant is in jail for more than two years.

8. Considering all those circumstances we find that the appellant make out a prima facie for grant of suspension of sentence, during pendency of the appeal. Accordingly, the Criminal Miscellaneous Petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:



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i. The petitioner is directed to be enlarged on bail, on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like-sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate No.I, Shencottai, Tirunelveli District.

ii. The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., until further orders.

iii. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 of Cr.P.C. and appear before the trial Court on any other day, as determined by the trial Court, in lieu of the day on which they would absent.

sd/-

29/10/2021

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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 ADDITIONAL DISTRICT & SESSIONS JUDGE (FAST TRACK COURT),
TENKASI, TIRUNELVELI DISTRICT.
- 2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.I
SHENCOTTAI, TIRUNELVELI DISTRICT.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI DISTRICT.
- 4 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
- 5 THE INSPECTOR OF POLICE
COURTALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.3389 of 2021

IN

CRL A(MD) No.601 of 2019

Date : 29/10/2021

SA/JM/SAR.2/29.10.2021/3P/7C