



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

Friday, the Twenty Second day of January Two Thousand and Twenty One

PRESENT

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

Crl.M.P.(MD) Nos.4116 & 4118 of 2020
IN

CRL A(MD) No.179 of 2020

SUNDAR ... PETITIONER/ APPELLANT/ ACCUSED NO.1
IN Crl.M.P.(MD) No.4116 of 2020
IN CRL A(MD) No.179 of 2020

CHINNADURAI ... PETITIONER/ APPELLANT/ ACCUSED NO.2
IN Crl.M.P.(MD) No.4118 of 2020
IN CRL A(MD) No.179 of 2020
- Vs-

STATE REP.BY
THE INSPECTOR OF POLICE,
V.K.PURAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.178/2015.

... RESPONDENT/ RESPONDENT/ COMPLAINANT
IN BOTH THE PETITIONS

Prayer in CRL MP(MD). 4116/ 2020 IN CRL A(MD) No.179 of 2020:

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.640 of 2015 dated 05/03/2020 on the file of the IVth Additional Sessions Judge, Tirunelveli, Tirunelveli District and till the disposal of Criminal Appeal.

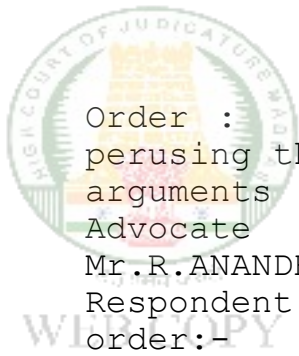
Prayer in CRL MP(MD). 4118/ 2020 IN CRL A(MD) No.179 of 2020:

To suspend the execution of sentence by granting bail in S.C.NO.640 of 2015 dated 05/03/2020 on the file of IVth Additional Sessions Judge, Tirunelveli, Tirunelveli District and till the disposal of Criminal Appeal.

Prayer in CRL A(MD) No.179 of 2020:

To call for the records from the Lower Court in S.C.No.640 of 2015 on the file of the IVth Additional Sessions Judge, Tirunelveli, Tirunelveli District and set aside the judgment dated 05.03.2020 by acquitting the appellants.

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



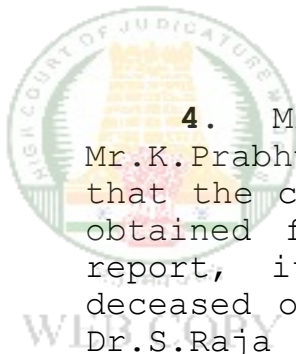
Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for Mr.K.PRABHU, Advocate for the petitioner in both the petitions and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent in both the petitions, the court made the following order:-

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

The petitioners are A1 and A2 in Sessions Case No.640 of 2015, on the file of the IV Additional Sessions Court, Tirunelveli, and they were tried for the offences punishable under Sections 294(b), 302 and 302 r/w 109 I.P.C.

2. Before the Trial Court, in order to prove the prosecution case, in total, twelve witnesses were examined and eighteen documents and two material objects were marked. The learned Trial Judge, on appreciation of the evidence adduced by the parties, found A1 guilty for the offence under Section 302 and A2 guilty for the offence under Section 302 r/w 109 I.P.C. and sentenced them to undergo life imprisonment with a fine of Rs.5,000/- each, while acquitting them from the charge under Section 294(b) I.P.C. Challenging the conviction and sentence, the accused have filed the above criminal appeal and pending appeal, they have filed the present criminal miscellaneous petitions seeking suspension of sentence.

3. The case of the prosecution is that on 05.01.2015, at about 11.30 p.m., when the deceased Jeevankumar and his friend Sakthi were conversing in front of Durai's house at Chokkampatti, both the accused came in an inebriated mood talking filthy words aloud. The further case of the prosecution is that when the deceased questioned them, a wordy quarrel arose between them and the accused are said to have attacked the deceased, for which a case in Crime No.7 of 2015 was registered by the respondent Police against the accused punishable under Sections 294(b), 323, 324 and 506(ii) I.P.C. It is the further case of the prosecution that both accused were insisting the deceased to withdraw the criminal case. Since it was not considered by the deceased, on 02.08.2015, at 11.30 p.m., both the accused came to the scene of occurrence and found the deceased standing there. Immediately A2 scolded the deceased and also attacked him with wooden log on his left shoulder, but, it was thwarted by the deceased and thereafter, A2 caught hold of the deceased and A1 inflicted stab injuries on the stomach of the deceased. Immediately, the deceased was carried to Ambasamudram Government Hospital, from where he was referred to Tirunelveli Government Hospital, wherein he was admitted on 03.08.2015 at 03.35 a.m., and despite treatment, he breathed his last on 06.08.2015 at 07.00 p.m.



4. Mr.V.Kathirvelu, learned Senior Counsel, assisted by Mr.K.Prabhu, learned counsel on record for the petitioners, urged that the criminal case came to be registered based on the statement obtained from the deceased himself and in the first information report, it has been specifically stated that A2 attacked the deceased on his left shoulder with a stick. But, the evidence of Dr.S.Raja (P.W.10), who conducted postmortem on the body of the deceased and the Postmortem Report (Ex.P12) would reveal that there was no corresponding injury on the left shoulder of the deceased. He further added that Dr.Ilayaraja (P.W.7), in his evidence, has stated that the deceased informed him that he was attacked by two known persons, but there was only one injury on the deceased. He has taken us through the evidence of P.Ws.7 and 10 in support of his contention that medical evidence is not supporting the case of the prosecution.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would oppose the application contending that both the accused had previous enmity and insisted the deceased to withdraw the criminal case filed against them. It is further contended that the incident was witnessed by P.Ws.1 and 2 and they have supported the prosecution case and there is no flaw in the conclusion of the Trial Court, hence, the accused are not entitled for suspension of sentence.

6. We have carefully considered the rival submissions and perused the materials available on record.

7. After hearing both sides, when this Court was not inclined to suspend the sentence imposed on Sundar (A1), the learned counsel appearing for the petitioners submitted that he is withdrawing Crl.M.P.(MD) No.4116 of 2020 filed by A1 and he has also made an endorsement to that effect. In view of the endorsement so made, **Crl.M.P.(MD) No.4116 of 2020 filed by Sundar (A1) is dismissed as withdrawn.**

8. With regard to Crl.M.P.(MD) No.4118 of 2020 filed by Chinnadurai (A2) is concerned, even as per the prosecution case, he is said to have attacked the deceased with a stick on his left shoulder and caught hold of the deceased to enable A1 to inflict fatal injuries on the deceased. Considering the overt acts attributed against Chinnadurai (A2) and the testimony of P.Ws.7 and 10, we are inclined to suspend the sentence imposed on Chinnadurai (A2) alone.

9. Accordingly, **Crl.M.P.(MD) No.4118 of 2020 is allowed and the substantive sentence of imprisonment imposed on the petitioner (A2) is suspended,** subject to the following conditions:

- i. The petitioner (A2) is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten



thousand only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Judicial Magistrate, Ambasamudram.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioner (A2) shall appear before the learned Judicial Magistrate, Ambasamudram, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. On any particular date, if the petitioner (A2) is not able to appear, leave is granted to him to file an application under Section 317 Cr.P.C. and appear before the Committal Court on any other day, as determined by the Committal Court, in lieu of the day on which he would absent.

sd/-

22/01/2021

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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 IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI, TIRUNELVELI DISTRICT.
2. THE JUDICIAL MAGISTRATE, AMBASAMUDRAM.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
4. THE INSPECTOR OF POLICE,
V.K.PURAM POLICE STATION, TIRUNELVELI DISTRICT.
5. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.K.PRABHU, Advocate SR.No.448

ORDER IN

CrI.M.P.(MD) Nos.4116 & 4118 of 2020

IN CRL A(MD) No.179 of 2020

Date :22/01/2021