



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

Friday, the Sixth day of August Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice J.NISHA BANU

CRL MP(MD) No.5013 of 2021
in
Crl.A.(MD).No.83 of 2019

JEGAN

... PETITIONER/ 2nd APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KALAKAD POLICE STATION,
KALAKAD, TIRUNELVELI.
(CRIME NO.238 OF 2014)

... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner in S.C.No.464 of 2015 on the file of the learned III Additional District and Sessions Judge, Tirunelveli dated 23.08.2018 and enlarge the petitioner on bail pending disposal of the Criminal Appeal (MD) 83/2019.

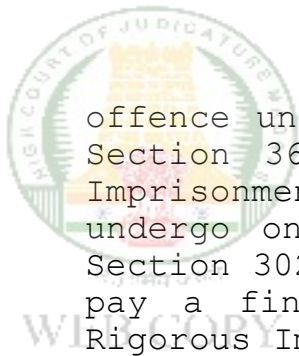
Prayer Crl.A. (MD) .No.83 of 2019:

To set aside the judgment of conviction and sentence passed by the learned IIIrd Additional District and Sessions Judge Court, Tirunelveli made in S.C.No.464 of 2015 dated 23.08.2018 and allow the above Criminal Appeal.

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.VENKATESAN, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for Government on behalf of the Respondent, the court made the following order:-

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

The petitioner is the second accused in S.C.No.464 of 2015 on the file of the the III Additional District and Sessions Judge, Tirunelvel. The trial Court, on appreciation of evidence, held that the petitioner has committed the offence and convicted him for the



offence under Sections 364 and 302 I.P.C and for the offence under Section 364 I.P.C., sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.2,000/- and in default to undergo one year Rigorous Imprisonment and for the offence under Section 302 I.P.C, sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default to undergo one year Rigorous Imprisonment. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2. The learned counsel appearing for the petitioner would submit that it is a case based on circumstantial evidence and the circumstances available are that the evidence of P.Ws.3, 4 and 5, who are said to have seen the deceased with the company of the accused and the extra judicial confession given by A-1 before the Village Administrative Officer and there is no other material available to prove the case against the petitioner. But, the trial Court without considering the same, has wrongly convicted the petitioner.

3. Mr.S.Ravi, learned Standing counsel appearing for the State opposing the bail application would submit that from the evidence of P.Ws.3, 4 and 5, it is seen that the petitioner/A-2 along with the first accused, only took the deceased in a motorcycle before the occurrence and thereafter, on the next day, he was found dead with serious injuries all over the body, that apart, the first accused in this case has given extra judicial confession before the Village Administrative Officer confessing his guilt. Hence, the chain of circumstances clearly points out the guilty of the accused and therefore, the trial Court has rightly convicted the petitioner/A-2 and hence, the petitioner is not entitled for bail.

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

5. It is a case of circumstantial evidence and the deceased is a stranger, who was said to have been lying before a temple in an inebriated mood and abusing the passersby. After seeing that, P.Ws.3 and 4, asked the petitioner and the other accused to take the deceased and leave him somewhere else and thereafter, the petitioner along with other accused said to have taken the deceased in a motorcycle and except that, there is no other evidence available in this case. Apart from that, no motive is also attributed to the petitioner. The another circumstance is that A-1, the co-accused, said to have given the extra judicial confession about the occurrence and it is not a substantial evidence.

6. Considering the above circumstances, We find that, a *prima facie* case has been made out for grant of suspension of sentence.



7. Considering the above aspects, we are inclined to grant suspension of sentence. 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:

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 Judicial Magistrate, Kalakad.

ii. The petitioner shall appear before the trial Court at 10.30 a.m., on the first working day of every English calendar month 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 Court concerned on any other day, as determined by the Court concerned, in lieu of the day on which he would absent.

sd/-

06/08/2021

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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 III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUNELVELI.

2 THE JUDICIAL MAGISTRATE, KALAKAD.

3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

4 THE INSPECTOR OF POLICE,
KALAKAD POLICE STATION,
KALAKAD, TIRUNELVELI.

5 THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.



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

+1 CC to M/s.R.VENKATESAN, Advocate (SR-5163[I] dated 06/08/2021)

WEB COPY

ORDER

IN

CRL MP(MD) No.5013 of 2021

in

Cr1.A.(MD).No.83 of 2019

Date :06/08/2021

pm

MS/PN/SAR-4/09.08.2021/4P.8C