



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

Monday, the Twenty Second day of February Two Thousandand Twenty One

PRESENT

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

CRL MP(MD) No.4665 of 2020

IN

CRL A(MD) No.287 of 2020

BASHEER MOHAMMED

... PETITIONER/APPELLANT/
ACCUSED No.1

Vs

THE STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
MELUR SUB DIVISION, MELUR,
MADURAI DISTRICT.
CRIME NO.467 OF 2013

... RESPONDENT/RESPONDENT/
COMPLAINANT

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 and granting bail in S.C.No.10 of 2016 on the file of learned Sessions Judge, Mahila Court, Madurai, Madurai District dated 24.12.2018 till the disposal of the Criminal Appeal.

PRAYER IN CRL A(MD) No.287 of 2020:

Pleased to allow this appeal by acquitting the appellant in S.C.No.10 of 2016, dated 24.12.2018 on the file of the Additional District and Sessions Judge, Mahalir Court, Madurai.

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.K.PRABHU, Advocate for the petitioner and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Date of Reservation	08.02.2021
Date of Judgment	22.02.2021



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

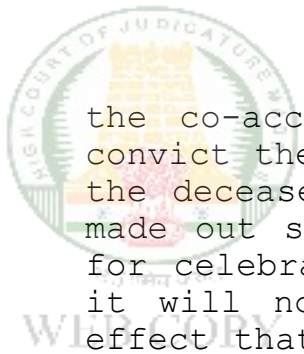
This Criminal Miscellaneous Petition is filed to suspend the substantive sentence passed by the Sessions Judge mahila Court, Madurai District, in SC No.10 of 2016, dated 24.12.2018 and enlarge the petitioner/Appellant on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that the petitioner and the deceased were married to each other. After the marriage, the deceased was living with the petitioner and his family members as a joint family. Later, all the accused, demanded additional money and jewels as dowry from the deceased and they harassed her. The petitioner demanded the deceased to bring gold bangles for their children and harassed her and also demanded a sum of Rs.50,000/-. On 08.08.2013, when the brother of the defacto complainant came from abroad, the petitioner scolded the deceased for not bringing cell phone to him. With an intention to cause death of the deceased, on 09.08.2013, at around, 11.45 a.m, the petitioner strangled the deceased and later, poured kerosene on the body of the deceased and set her ablaze and thereby, committed the offence under section 302 IPC.

3.To prove the charge, the prosecution examined 20 witnesses and marked 19 documents as well as the 7 material objects. On the side of the accused, no witness was examined and no document was marked.

4.The trial court, after considering the materials available on records, came to the conclusion that the charge framed against the accused has been proved beyond all reasonable doubt and convicted and sentenced him to 2 years rigorous imprisonment with a fine of Rs.1000/-, in default to undergo 6 months simple imprisonment for the offence under Section 498 (A) IPC, sentenced him to life imprisonment with a fine of Rs.5,000/-, in default to undergo 1 year simple imprisonment for the offence under Section 302 IPC and sentenced him to 5 years rigorous imprisonment with a fine of Rs.3000/-, in default to undergo 9 months simple imprisonment for the offence under Section 201 IPC. Challenging the conviction and sentence of the trial court, the appeal has been prepared by the petitioner. Along with the appeal, this criminal miscellaneous petition is also filed seeking suspension of sentence.

5.According to the learned Senior counsel for the petitioner, it is a case of suicide and prosecution has not proved the guilt of the accused and there are very many contradictions and untrustworthy worthiness in the prosecution case; There is no eye witness to the occurrence. In the place of occurrence, the petitioner was not present when the death occurred; Even as per the case of the prosecution, there were two postmortem reports and only one was produced by the prosecution, during trial. On the same set of facts,



the co-accused were acquitted by the Trial Court, but, chose to convict the petitioner only on the ground that he is the husband of the deceased; As per the evidence of P.W.1, no demand of dowry is made out since she has stated that she asked a sum of Rs.50,000/- for celebrating tonsuring ceremony of the child. According to him, it will not amount to demand of dowry; There is no evidence to effect that the accused demanded dowry from the deceased; The Trial Court convicted the accused only on the ground that he gave false explanation regarding the death of the deceased. As per the postmortem report, external injury was found in fore head of the deceased. But, the prosecution has failed to explain the same. The further arguments is that the Accident Register recorded by P.W.13 was not produced before the Court as well as the inquest report prepared by P.W.16. There are two postmortem reports. Suppression of one, will show that prosecution has not come to the Court with truth and complete facts. The witnesses have spoken about the smoke emanated from the residential portion of the deceased and the petitioner. So, according to the learned counsel for the petitioner these arguable points are available to him and so, the petitioner is entitled for suspension of sentence and he would further say that the petitioner is affected by paralysis and often used to fall down and sustain injuries and in the last occasion, he fell down and broke his right fore arm. He would also submit that the petitioner requires proper medical treatment and also insisted that he may released on medical ground. For the purpose of ascertaining the present physical condition and health condition of the petitioner, after hearing the arguments of the learned Senior Counsel for the petitioner and Mr.Anand Raj, learned Additional Public Prosecutor, we called for medical records from the Central Prison, Madurai. Mr.Anandha Raj, the learned Additional Public Prosecutor for the State, has produced a file containing certificate issued by the present Medical Officer, Madurai.

6.Perusal of records shows that the petitioner is affected by Neonatal Cerebral Palsy and because of that he developed cerebro vascular accident and on 21.09.2019, he developed headache and giddiness, for which, he was referred to Government Rajaji hospital, Madurai. On 16.11.2019, he sustained fracture on the left fore arm and underwent conservative treatment. At present, he is asymptomatic, stable and carrying out his daily activities normally in the prison campus.

7.So it is seen that, the petitioner is suffering from nuero problem and because of that, he is undergoing frequent medical treatment. Even though, it is not suggested by the Prison Authorities that he requires medical treatment out of the prison, we are of the considered view that it may be in the interest of the health condition of the petitioner to take followup treatment for some time, so that, his health condition may improve. After judgment, he is in prison for more than two years. In the light of

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petitioner on merits and on humanitarian ground, we deem it fit to suspend the sentence of the petitioner.

8. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended. The petitioner is directed to be enlarged on bail on condition that he shall execute 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, Melur, and on further condition that the petitioner shall appear before the said court once in a week i.e., on every Monday at 10.00 a.m, pending appeal.

sd/-
22/02/2021

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/ /2021

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

TO

1. THE SESSIONS JUDGE,
MAHILA COURT, MADURAI.
 2. THE JUDICIAL MAGISTRATE, MELUR.
 3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
 4. THE DEPUTY SUPERINTENDENT OF POLICE,
MELUR SUB DIVISION, MELUR,
MADURAI DISTRICT.
 5. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.K.PRABHU Advocate SR.No.1302

ORDER
IN
CRL MP(MD) No.4665 of 2020
IN
CRL A(MD) No.287 of 2020
Date : 22/02/2021

DSS
TK/PN/SAR.3/23.02.2021/4P/8C