



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

Reserved on : 29.01.2021
Pronounced on : 04.02.2021

WEB COPY

PRESENT

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

CRL MP(MD) No.5095 of 2020
IN
CRL A(MD) No.168 of 2020

SIVAKANDAN

... PETITIONER/APPELLANT/ACCUSED No.5

Vs

STATE THROUGH,
THE INSPECTOR OF POLICE,
CB CID NAGERCOIL,
IN CRIME NO.868 OF 2010
OF KOTTOR POLICE STATION,
KANYAKUMARI DISTRICT.

... 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 imposed on the Petitioner by the Learned Principal Sessions Judge, Tirunelveli in S.C.No.600 of 2017 dated 12/02/2020 and enlarge the Petitioner on bail pending disposal of the above Criminal Appeal on the file of this Honourable Court.

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.S.KARTHIKEYAN, Advocate for the petitioner and of Mr.R.ANANTHARAJ, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

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

This Criminal Miscellaneous Petition is filed to suspend the sentence passed by the Principal District and Sessions Judge, Tirunelveli, in SC No.600 of 2017, dated 12.02.2020 and enlarge the petitioner/Appellant on bail, pending disposal of the criminal appeal.



2.The case of the prosecution is that A2 and A3 namely Udhayakumar and Udhayasankar are brothers and they were in Management and Administration of Mutharamman Temple and Kamaraj Polytechnic College. There are two groups one under the head of A2 and A3 and the other group under the head of one Sadhasivam opposing the Management and day today activities of the persons in Management. The deceased was the supporter of the said Sadhasivam. It appears that due to enmity, criminal cases came to be filed against both the groups from 2001 to 2010. It is the further case of the prosecution, due to enmity, A3 and A4 on 07.07.2020 at 8.30 am, conspired with the other accused to eliminate the deceased Manikandan @ Ayyappan and in pursuance of the conspiracy, on 07.07.2020 at 6.30 pm, when the deceased was sitting inside the Car near Rajalakshmi Hospital, Irulappapuram Junction, A1, A4, A5 and A6 came in two motorcycles with Aruval and attacked the deceased, which resulted instantaneous death of the deceased Manikandan @ Ayyappan. The petitioner was stated to have assaulted the deceased with aruval on the left back side of head.

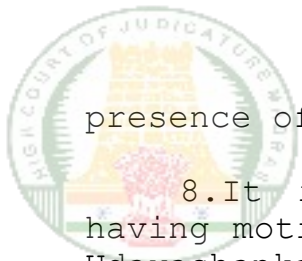
3.To prove the charges, the prosecution examined 56 witnesses and marked 56 documents and MO1 to MO23. On the side of the accused, 5 witnesses were examined and 15 document were marked.

4.The trial court, after considering the materials available on records, came to the conclusion that the charge framed under section 302 IPC against the petitioner/A5 has been proved beyond all reasonable doubt and convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-. The accused 2, 3 and 6 were acquitted and the rest of the accused were convicted under section 302 IPC. Aggrieved by the judgment of the trial court, the present petitioner/A5 has filed a criminal appeal before this court. Pending appeal, the petitioner has also filed the present petition for suspension of sentence imposed on him.

5.The earlier petition filed by this petitioner was dismissed on merits by this court in Crl.MP(MD)No.3079 of 2020 in Crl.A(MD) No.168 of 2020, dated 13.07.2020. After that, this petition came to be filed. Even though there can be no bar for filing successive suspension petitions and bail applications, change of circumstances and new facts must be stated by the petitioner.

6.Perusal of the earlier petition as well as this petition shows that there is no marked difference between averments in these two petitions. One or two irrelevant paragraphs were deleted and relevant paragraphs were incorporated. Even in those paragraphs, no change of circumstance and new facts have been stated.

7.But however, it is submitted on the side of the learned counsel for the petitioner that no specific overtact has been attributed by the witnesses against this petitioner and even PW12, place of occurrence was not informed about the



presence of this petitioner in the place of occurrence.

8.It is his further contention that the petitioner was not having motive with the deceased, whereas only the 3rd accused namely Udayashankar was stated to have motive with the deceased person. But Udhayashankar was acquitted by the trial court.

9.It is his further contention that PW1 has stated during the course of cross examination that he informed PW2 and PW3 about the occurrence. So the presence of PW2 and PW3 is highly doubtful. Even as per the evidence of PW1, no specific overtact has been attributed against this petitioner and this petitioner is only a friend of Udhayakumar namely 2nd accused and is noway involved in the occurrence.

10.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent/State would submit that there are two groups operating in that area and they were having cases and counter cases; having rivalry over the Temple as well as College Administration; PW1 to PW4 clearly deposed about the involvement of this petitioner and he would also submit that the petitioner is history sheeted rowdy.

11.Perusal of the entire records would show that as contended by the learned Additional Public Prosecutor, two groups were operating in that area, one under the head of one Sadhasivam, who was supported by the deceased and another under A3. There were cases and counter cases between them over the Temple and College Administration. How far, the contradictions that have been elicited during the cross examination of PW1 to PW4 affect the case of the prosecution, can be decided only at the time of main appeal.

12.As mentioned in the earlier order, the deceased sustained 24 fatal injuries and the occurrence said to have taken place in a public place. When the deceased was running for his life, he was chased and attacked and the death was instantaneous. So, the manner of occurrence disentitles the petitioner from claiming the benefit of suspension of sentence. As mentioned in the earlier order, no change of circumstances and new facts are brought on record by the petitioner for consideration in this petition. So, this criminal miscellaneous petition deserves dismissal and accordingly, it is dismissed.

sd/-
04/02/2021

/ TRUE COPY /

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



TO

1. THE PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.
2. THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.
3. THE INSPECTOR OF POLICE,
CB CID NAGERCOIL,
KOTTOR POLICE STATION,
KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.5095 of 2020
IN
CRL A (MD) No.168 of 2020
Date : 04/02/2021

dss
PK/JC/SAR-IV/10.02.2021 : 4P/5C