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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CrI.M.P.No.2605 of 2022

in CrI.A.No.474 of 2021

1.Pakkiri @ Pakkirisami
2.Pavadai
3.Gajendran
4.Kubendran

.. Petitioners/AA 1 to 4

Vs.

State represented by
The Inspector of Police,
(*)Thirunavalur Police Station,
Kallakurichi- District.
Crime No.52/2011

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioners by judgment and order dated 13.09.2021 passed in S.C.No.142 of 2013 on the file of the Additional District and Sessions Court, (Fast Track Court), Villupuram and to enlarge the petitioners on bail pending disposal of the appeal.

For Petitioners : Mr.S.Ashok Kumar
Senior Counsel for
Mr.A.Sasidharan
(DATED 24.03.2022)

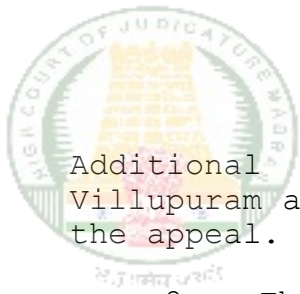
: Mr.A.Sasidharan
(DATED 04.04.2022)

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor

O R D E R

(Made by P.N.PRAKASH, J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 13.09.2021 passed in S.C.No.142 of 2013 on the file of the



Additional District and Sessions Court, (Fast Track Court), Villupuram and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who were the accused in S.C.No.142 of 2013 before the Additional District and Sessions Court, (Fast Track Court), Villupuram, were convicted and sentenced as follows on 13.09.2021:

Accused	Provision under which convicted	Sentence
Pakkiri @ Pakkirisami (A1)	Section 302 IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
Pavadai (A2) Gajendran (A3) Kubendran (A4)	Section 302 r/w 34 IPC, each	Life imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment, each.

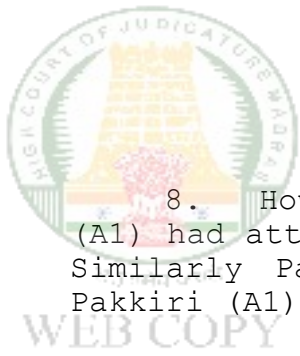
3. Challenging the above conviction and sentence, the petitioners have filed Crl.A.No.474 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. This is the second petition for suspension of sentence and bail.

5. Heard Mr.S.Ashok Kumar, learned Senior Counsel representing Mr.A.Sasidharan, learned counsel on record for the petitioners and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

6. It is the case of the prosecution that Kaliammal (PW5) is the widow daughter-in-law of one Ramalingam, whose wife Marimuthu died on 20.02.2011. In connection with the death ceremonies of Marimuthu, Kaliammal (PW5), who was living in her natal home, came to the house of Ramalingam. Since she had got estranged from the family of Ramalingam, the petitioners, who are the relatives of Ramalingam, did not want to permit her to join the ceremonies. However, a group of relatives headed by one Kasi came in support of Kaliammal (PW5), aggrieved by which, it is alleged that the petitioners had attacked Kasi and one Jothilingam, resulting in the death of Kasi and injuries to Jothilingam.

7. The learned counsel for the petitioners submitted that the entire quarrel had taken place in a spur of the moment, when Kaliammal (PW5) came to the house of her father-in-law in order to participate in the death ceremonies of her mother-in-law.



8. However, we find from the evidence on record that Pakkiri (A1) had attacked Kasi with a crowbar and had caused injuries to him. Similarly Pavadai (A2) had also joined in the attack along with Pakkiri (A1) and had assaulted Kasi as well Jothilingam.

9. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), has considered Kashmira Singh vs. State of Punjab and has held as follows:

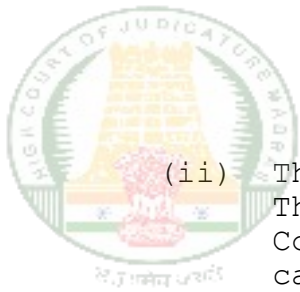
"30.In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

10. In view of the above and taking into consideration the evidence against Pakkiri (A1) and Pavadai (A2), this is not a fit case to grant suspension of sentence and bail to them and accordingly, this criminal miscellaneous petition stands dismissed qua Pakkiri (A1) and Pavadai (A2), petitioners 1 and 2 herein.

11. As regards Gajendran (A3) and Kubendran (A4), the allegations are not very serious in nature, in that, they had not used any weapons in the assault.

12. Accordingly, this criminal miscellaneous petition stands allowed qua Gajendran (A3) and Kubendran (A4), petitioners 3 and 4 herein and the sentence of imprisonment is suspended and bail is granted to the petitioners 3 and 4 on the following conditions:

- (i) The petitioners 3 and 4 shall execute a bond for a sum of Rs.25,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Additional District and Sessions Court, (Fast Track Court), Villupuram;



(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their mobile number, Aadhar card or Bank pass Book to ensure their identity; and

(iii) The petitioners 3 and 4 shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

-sd/-
24/03/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

[*]Amended as per order of this court dated 04.04.2022 made in Cr1.MP.NO.4503/2022 in Cr1.A.No. 474/2021

TO

1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, (FAST TRACK COUR),
VILLUPURAM

2 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

3 THE INSPECTOR OF POLICE,
(*) THIRUNAVAILUR POLICE STATION,
KALLAKURICHI- DISTRICT.

4 INSPECTOR OF POLICE,
THIRUKOVILLOOR POLICE STATION,
KALLAKURICHI DISTRICT.



5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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+1 C.C. to M/S. A.SASIDHARAN Advocate on payment of necessary
charges SR.NO. 5070

Order
in
CRL MP.2605/2022

in Crl.A.No.474 of 2021

Date :24/03/2022

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copies of the BAIL/Anti.BAIL Orders in this format

RVR 28/03/2022

RW 06/04/2022