



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh day of April Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice A.A. NAKKIRAN

CRIMINAL MISCELLANEOUS PETITION No.3842 of 2022

IN CRL.A.NO.122 of 2022

VIRUTHAMMAL

[PETITIONER]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
KALAVAI POLICE STATION,
KRISHNAGIRI DISTRICT.
(CRIME NO.29/2009)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

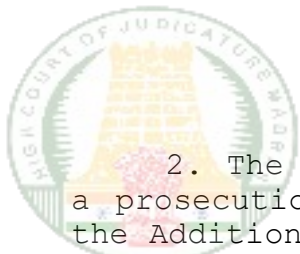
(i) To suspend the sentence in S.C No.96/2018 dated 16.03.2021 passed by the Additional Sessions Judge, Krishnagiri and enlarge the petitioner on bail pending disposal of the above Crl.A.No.122/2022.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the petitioner, and of M/S.R.MUNIYAPPARAJ, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

ORDER

P.N.PRAKASH, J.

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence dated 16.03.2021 passed by the Additional Sessions Judge, Krishnagiri, in S.C.No.96 of 2018 and enlarge the petitioner on bail, pending disposal of the appeal.



2. The petitioner (A2), the wife of the deceased Pazhani, faced a prosecution along with one Raji (A1) in S.C.No.96 of 2018 before the Additional Sessions Judge, Krishnagiri, and was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment vide judgment and order dated 16.03.2021.

3. Challenging the aforesaid conviction and sentence, the petitioner (A2) has preferred appeal in Crl.A.No.122 of 2022 and in the instant Criminal Miscellaneous Petition, she seeks suspension of sentence and bail.

4. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the petitioner (A2) is the wife of Pazhani (deceased); she was having illicit intimacy with Raji (A1), who was a friend of Pazhani; when Pazhani came to know of it, it is alleged that he tortured her and therefore, she, in collusion with Raji (A1), decided to eliminate Pazhani; in furtherance of their plan, Raji (A1) invited Pazhani to come to Chendrayan Hill Temple on 24.02.2009; the petitioner (A2) accompanied Pazhani to the said temple and after worship, while they were returning, the petitioner (A2) deliberately picked up a quarrel with Pazhani and pushed him down; while so, she was attempting to strangulate him and Raji (A1) threw a boulder on the head of Pazhani and caused his death; thereafter, they discarded the body of Pazhani within the limits of the respondent police and escaped.

6. Mr.Sankarasubbu contended that the petitioner (A2) was in police custody and that is why, she did not participate even in the death ceremonies of her husband Pazhani and therefore, the alleged confession that was given by the petitioner (A2) before the Village Administrative Officer is of no relevance.

7. In this connection, the trial Court has given the following findings in paragraphs 37 and 53 of its judgment, which read as under :

"37. The evidence given by PW14 reveals that A2 went to Panamarathupatti VAO office and gave statement regarding the murder of Palani. Thereafter alone, she was handed over to Investigation Officer. Even though PW10 Annamalai handed over A2 to Panamarthupatti VAO while he was examined in this court he turned hostile since he is the cousin brother of A2. But the evidence given by PW14 Muniyappan clearly shows the surrender of A2 before VAO Anbazhagan and other things. Hence the argument submitted by the defence counsel in this regard is not found acceptable.



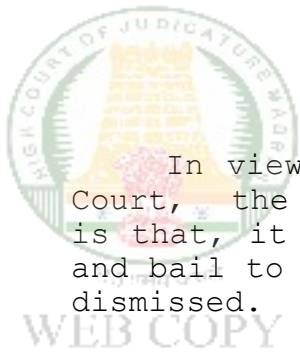
53. In a murder case, there is no possibility for eye-witness, because the crime is committed in a remote place in the absence of any witness and that too in the odd hours. In this case also, A1 and A2 preplanned to murder the said deceased Palani since the said Palani subjected his wife with cruelty since he suspected the fidelity of his wife. And according to their plan, A2 brought her husband to the occurrence place by stating that all of them would go to Chendrayan Hill Temple. Believing the words of A2, the deceased came along with her and after worshipping Chendrayan Hill Temple deity and proceeding towards Jumbupallam Village, A1 and A2 murdered the deceased and threw his body in the nearby pit. And according to the evidence given by PW4/Sakthi this Court is able to conclude that prior to the occurrence he saw the deceased with the company of A1 and A2. And after two hours, A1, A2 alone returned from the Chendrayan Hill Temple."

8. In the light of the aforesaid findings, it cannot be stated that there are no *prima facie* materials at all against the petitioner (A2) for granting suspension of sentence and bail.

9. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) [(2008) 5 SCC 230]**, 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."

(emphasis supplied)



In view of the above authoritative pronouncement of the Supreme Court, the opinion of this Court, in a case of such a grave nature is that, it would not be appropriate to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this petition stands dismissed.

-sd/-
27/04/2022

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

TRUE COPY

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

TO

1 THE ADDITIONAL SESSIONS JUDGE
KRISHNAGIRI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
KALAVAI POLICE STATION,
KRISHNAGIRI DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SPECIAL JAIL FOR WOMEN,
VELLORE.

C.C. to M/S.R.SANKARASUBBU Advocate on payment of necessary charges

Order

in
CRL MP.3842/2022
in
CRL A.122/2022

Date :27/04/2022

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