



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Monday, the Eleventh day of April Two Thousand Twenty Two

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PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice A.A. NAKKIRAN

CRIMINAL MISCELLANEOUS PETITION No.3844 of 2022

in Crl.A.No.308 of 2020

MATHIYARASAN

[PETITIONER/2nd APPELLANT/ACCUSED 2]

Vs

THE INSPECTOR OF POLICE [RESPONDENT/COMPLAINANT]
VILLUPURAM TALUK POLICE STATION,
VILLUPURAM DISTRICT.
CRIME NO.654 OF 2012.

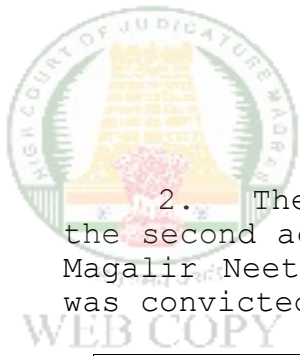
Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.308 of 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram in Sessions Case No.450 of 2013 dated 16.07.2020 and enlarge the petitioner on bail pending disposal of the above said Criminal Appeal No.308 of 2020 and pass such further or other orders as this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.308 of 2020 on the file of the High Court and upon hearing the arguments of M/S.S.SARAVANA KUMAR, 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 imposed on the petitioner by judgment and order dated 16.07.2020 passed in S.C.No.450 of 2013 on the file of the Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram and to enlarge the petitioner on bail, pending disposal of the above appeal.



2. The petitioner, who is the brother of Murugan (A1), was the second accused in S.C.No.450 of 2013 before the Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram and was convicted and sentenced as follows on 16.07.2020:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 302 r/w 34 IPC	Life imprisonment and fine of Rs.25,000/-, in default to undergo one year rigorous imprisonment.
Section 201 r/w 302 r/w 34 IPC	Two years imprisonment and fine of Rs.10,000/-, in default to undergo five months rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the aforesaid conviction and sentences, the petitioner (A2) has filed Crl.A.No.308 of 2020 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Saravana Kumar, learned counsel for the petitioner (A2) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. This is the second petition seeking suspension of sentence and bail and the earlier petition in Crl.M.P.No.7953 of 2020 in Crl.A.No.308 of 2020 filed by the petitioner (A2) was dismissed as withdrawn on 10.08.2021.

6. It is the case of the prosecution that Bargavi (PW2), who is the daughter of Murugan (A1), appeared in a TV channel program and stated that her father Murugan (A1) had committed three murders and had buried the bodies.

7. Based on this public telecast, the police registered a case and exhumed three dead bodies in the house of Murugan (A1) and prosecuted him, his brother Mathiyarasan (A2) (petitioner herein) and his (A1's) wife Rajeshwari (A3) in S.C.No.450 of 2013, in which, the trial Court acquitted Rajeshwari (A3).

8. The learned counsel for the petitioner (A2) submitted that there is absolutely no shred of evidence to sustain the conviction of the petitioner (A2) except the confession statement of Murugan (A1), which has also been recorded by Rathinavel (PW16), Deputy Tahsildar. He further submitted that in the said confession, Murugan (A1) has disclosed the overt act of the petitioner (A2) herein. It is his further submission that even if the confession



statement of Murugan (A1) is accepted as true, yet, a reading of it shows that the petitioner (A2) had only assisted Murugan (A1) in disposing of the body of Silambarasan.

9. Per contra, the learned Additional Public Prosecutor took this Court through the findings of the trial Court and submitted that the manner in which Murugan (A1) and the petitioner (A2) had committed the murder of Silambarasan and disposed of the body, would itself show the gruesome manner in which the murder was committed and therefore, the petitioner (A2) will not be entitled to the relief of suspension of sentence and bail.

10. This Court gave its anxious consideration to the rival submissions.

11. Paragraph no.145 of the judgment and order of trial Court reads as follows:

"145. The charge against A2 is proved on the basis of Ex.P4 & P5. Already as discussed above the confession statement of A1 is accepted as true without any influence or threat or coercion. Hence, accepted in which A1 stated about the participation of A2 in the murder of Silambarasan and PW 12 Arul corroborated the confession statement Ex.P4 of A1. He stated that A1 invited him for making digging the earth for laying pipe line he did that job and taken 7 x 7 ft. Further Ex.P4 reveals that after sending PW12 they made further dug few feet and buried the body of Silambarasan. Since, Ex.P4 admit as valid document and A2 also participated the proceedings along with A1. The confession is taken as evidence against A2 as co-accused participated in the whole proceedings with A1 and this Court decided that the prosecution proved the case against A2. In the result U/s.302, 201 r/w 302 IPC (punishable life imprisonment fine Rs.25,000/-) though the presumption is rebuttal, accused had not taken any steps to rebut the same. Hence, this court come to conclusion that the prosecution proved the fact beyond reasonable doubt."

12. This Court cannot go into the evidentiary value of the confession statement of Murugan (A1) (Ex-P4) at this juncture and the same can be appreciated only during the final disposal of the main appeal. Suffice it to say that the findings of the trial Court cannot be said to be per se perverse in the facts and circumstances of the case.

13. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)¹, has considered Kashmira Singh v. State of Punjab² 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."

In view of the above reasoning and taking into consideration the nature of allegations against the petitioner (A2), we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

11/04/2022

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 SESSIONS JUDGE,
MAGALIR NEETHI MANDRAM,
(FAST TRACK MAHILA COURT),
VILLUPURAM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

3 THE INSPECTOR OF POLICE
VILLUPURAM TALUK POLICE STATION,
VILLUPURAM DISTRICT.



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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C.C. to M/S.S.SARAVANA KUMAR Advocate on payment of necessary charges

Order

in
CRL MP.3844/2022

in
Crl.A.No.308 of 2020

Date :11/04/2022

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RW 13/04/2022