



[Order of the Court was made by R.HEMALATHA, J.]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 30.11.2020 passed in S.C.No.312 of 2015 on the file of the V Additional District Judge, Coimbatore, and to enlarge the petitioner on bail pending disposal of the appeal.

2.The petitioner is the accused 2 in S.C.No.312 of 2015 before the V Additional District and Sessions Judge, Coimbatore, and was convicted and sentenced as follows:

S.No.	Rank of the accused	Conviction	Sentence
1.	A2	U/s. 120 (B) IPC	Imprisonment for life and to pay a fine of Rs.25,000/-in default, to undergo simple imprisonment for two months.
		U/s.302 r/w. 109 IPC	Imprisonment for life and to pay a fine of Rs.25,000/- in default, to undergo simple imprisonment for two months.
		U/s. 420 IPC r/w. 109 IPC	Seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.

The Learned District and Sessions Judge, further directed that the sentence shall run concurrently and the sentence already undergone shall be set off under Section 428 Cr.P.C. Challenging the same, the petitioner has filed Crl.A.No.547 of 2020 with the present petition for suspension of sentence and bail.

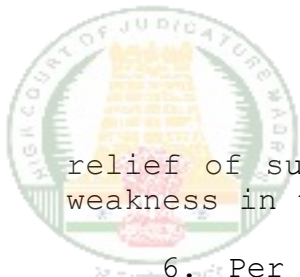
3. Heard Mr.Gopalakrishna Lakshmana Raju, learned Senior counsel assisted by Mr.R. Radha Pandian, for the petitioner and Mr. R. Muniyapparj, learned Additional Public Prosecutor for the respondent/State.



4. The case of the prosecution is that E.T.Rajavel (A1) and Manoharan Mohana (A2), the present petitioner, are husband and wife and were also practising advocates and members of Coimbatore Bar Association. A2, the petitioner was the accused in two criminal cases pending investigation in the state of Odisha, Ganjam District, Chamakandi Police Station for the offences under Sections 120B, 420, 408, 471 and 34 IPC r/w Sections 4,5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act. Palanisamy (A3), the driver of the couple is also a co-accused in the present case.

4.1 The case of the prosecution was that A1 to A3 conspired to eliminate the deceased Ammasai, W/o. Marimuthu, Sivananda Colony, Coimbatore, who was a client of the advocate couple, and to create false records so as to show that the dead person was A2, the petitioner, so that it would enable the closure of the criminal case against A2 in the State of Odisha. A1 and A3 strangled the victim Ammasai at the office and shifted the dead body to the residence of A1 and with the help of unscrupulous elements, manipulated the records to show that the deceased was A2 and that the death was a natural one. With the manipulated false records, they were even able to cremate the deceased Ammasai and managed to get a death certificate in the name of A2. Parallely, Sakunthala Devi (P.W.1), the daughter of the deceased, along with her husband P.W.2, Adi Ganesan found her victim mother missing and after a frantic search, lodged a complaint that her mother was missing. P.W.1 had compelling reasons to believe that her mother who had strained relationship with her father and also being the owner of 6.5 acres of land going missing was suspicious in nature. The police, investigating the missing person's case, stumbled upon the case of "A2's death" and a deeper probe into it revealed the facts which were already narrated above.

5. Mr.Gopalakrishna Lakshmana Raju, learned Senior counsel assisted by Mr.R. Radha Pandian, for the petitioner contended that the motive for the murder was an invention of the police as the so called fake death certificate in the name of A2 was never used in Odisha in the pending criminal cases against A2. It was also contended that the entire case vested on circumstantial evidence and the prosecution had strived itself to put up a cogent chain of events without bothering about the missing links and gaping holes in their theory. According to him, considerable lapse of time had taken place since the missing of the victim and most of the evidences supporting the prosecution theory had deposed without going into the actual facts of the case not meeting the requirements of circumstantial evidence. Moreover, the witnesses who are said to have overheard the conversation between A1 and A2 regarding the conspiracy to kill the victim are bogus witnesses, as the victim reportedly met A1 for the first time only in December 2011 whereas the witnesses claimed to have overheard the conversation in November 2011 itself. According to him, there are serious lapses in the prosecution case and that A2 being the mother of three children would definitely require the



relief of suspension of sentence especially in the light of inherent weakness in the case of prosecution.

6. Per contra, the learned Additional Public Prosecutor would contend that this is a unique case in which A1 to A3 have done to death an innocent victim who had come to A1 for legal consultation. A1 to A3 did not stop with that and went further to use the murder of the victim to their advantage by manipulating all the related records in order to make it appear that only A2 had died. All these were done with an intention to save A2 from criminal cases against her in the State of Odisha. The very fact that A2 is alive and not dead and the other evidence directly pointing to the involvement of all the three accused A1 to A3 in no way be circumvented by them. Keeping in mind the heinous crime committed by the accused, there should be no leniency shown to the accused in any manner. He therefore, prayed for dismissal of the petition.

7. In the instant case, the accused 1 & 2 are advocates and have been proved guilty of criminally conspiring and murdering the victim. No leniency on emotional grounds can be shown to them. The petitioner has been in the thick of all the happenings and the suspension of sentence based on the grounds pointed by Mr. Gopalakrishna Lakshmana Raju, learned Senior counsel appearing for the petitioner, cannot be allowed at this juncture. All those aspects can be gone into only at the time of final hearing of the Criminal Appeal.

8. At this juncture, it is pertinent 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



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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."

9. In view of the above, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

28/01/2022

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 V ADDITIONAL DISTRICT JUDGE,
COIMBATORE.

2 THE INSPECTOR OF POLICE,
B-15, RATHINAPURI POLICE STATION,
COIMBATORE.

3 THE OFFICER INCHARGE
PODANUR POLICE STATION,
COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. B.MOHAN Advocate on payment of necessary charges

Order
in
CRL MP.4237/2021
in
CRL A.547/2020
Date :28/01/2022

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TA-31/01/2022