



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

The Honourable Mr. Justice S.VAIDYANATHAN

and

The Honourable Mr. Justice A.D.JAGADISH CHANDIRA

Crl.M.P.No.5144 of 2022

in Crl.A.No.419 of 2022

Govindasamy

.. Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Dharapuram.

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389 Cr.P.C., to suspend the sentence imposed on the petitioner by judgment dated 04.12.2021 passed in S.C.No.40 of 2018 on the file of the Additional District-cum-Sessions Court No.III, Dharapuram, Tiruppur District and to enlarge the petitioner on bail pending disposal of the appeal.

For petitioner : Ms.D.Sathya

For Respondent: Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 04.12.2021 passed in S.C.No.40 of 2018 on the file of the Additional District-cum-Sessions Court No.III, Dharapuram, Tiruppur District and to enlarge the petitioner on bail pending disposal of the appeal.



2. It is the case of the prosecution that on 21.12.2017, around 7.30 a.m., when Thangamuthu (PW1/de facto complainant) was returning to his home along with his father Kaliappa Gounder (deceased), the petitioner is said to have waylaid Kaliappa Gounder, abused him in filthy language and assaulted him with a wooden log on the centre of his head, due to which, Kaliappa Gounder died on 04.01.2018.

3. Based on the complaint, a case in Dharapuram Police Station Crime No.604 of 2017 was registered by the respondent/police. After completion of the investigation, the respondent/police had filed a final report against the petitioner for the offences punishable under Sections 341, 294(b) and 302 IPC.

4. The petitioner was tried in S.C.No.40 of 2018 before the Additional District-cum-Sessions Court No.III, Dharapuram, Tiruppur District, in which, the learned trial Judge, has, by judgment and order dated 04.12.2021, convicted and sentenced the petitioner as follows:

Provision under which convicted	Sentence
Section 341 IPC	One month simple imprisonment.
Section 294(b) IPC	One month simple imprisonment.
Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

5. Challenging the above conviction and sentences, the petitioner has filed CrI.A.No.419 of 2022 along with the instant criminal miscellaneous petition seeking suspension of sentence.

6. Heard Ms.D.Sathya learned counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

7. The learned counsel for the petitioner submitted that the trial Court without properly appreciating and analyzing the evidence on record has convicted the petitioner. He further submitted that it is the case of Thangamuthu (PW1/de facto complainant) that the petitioner had assaulted his father with a wooden log on the centre of his head, whereas, there is no corresponding injury to that effect; as per Dr.Vidhya (PW11), who admitted Kaliappa Gounder, had found two incised wounds on his head and as per her evidence, such injuries would not have been sustained by the victim if he had been attacked with a wooden log; further it is also confirmed by Dr.Peraanandham (PW12), who conducted autopsy on the body of Kaliappa



Gounder; in such circumstances, Thangamuthu (PW1/de facto complainant) could not have seen the occurrence and he has been brought in by the prosecution; further, the alleged incident had taken place on 21.12.2017 and Kaliappa Gounder is alleged to have succumbed to the injuries on 04.01.2018; further, the independent witnesses have not supported the case of the prosecution and moreover, no evidence has been let in by the prosecution in respect of motive.

8. The learned counsel for the petitioner further submitted that the petitioner is a senior citizen, who is aged about 70 years and he has been unnecessarily roped in and has been convicted without any legal evidence. It is his further submission that right from the date of arrest, the petitioner is in judicial custody.

9. The learned Additional Public Prosecutor submitted that the Kaliappa Gounder was a person belonging to another village and the petitioner had questioned him as to how he can come and stay in his village and had assaulted him with a wooden log on 21.12.2017, due to which, he has sustained injuries on his head and succumbed to the injuries without responding to treatment on 04.01.2018. However, he fairly submitted that Dr.Vidhya (PW11), who has admitted Kaliappa Gounder in the hospital and Dr.Peraanandham (PW12), who had conducted autopsy, have found two cut injuries on the head of Kaliappa Gounder.

10. The petitioner has raised substantial grounds in the appeal, which require detailed appraisal. Further the appeal is not likely to be taken up in the near future. Taking into consideration the facts and circumstances of the case, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

11. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner on the following conditions:

- (i) The petitioner shall be released on bail on he executing a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the Additional District-cum-Sessions Court No.III, Dharapuram, Tiruppur District;
- (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



WEB COPY

(iii) The petitioner 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 he is not able to appear before the trial Court on any day, he 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 his absence, as directed by the trial Court.

-sd/-

08/06/2022

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 DISTRICT CUM SESSIONS JUDGE,
NO.III, DHARAPURAM, TIRUPPUR DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL JAIL, COIMBATORE.

3 THE INSPECTOR OF POLICE,
DHARAPURAM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S. D.SATHYA Advocate on payment of necessary charges SR.NO. 8697

Order

in

CRL MP.5144/2022

in CrI.A.No.419 of 2022

Date :08/06/2022

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

RW-15/06/2022