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Crl.M.P.No.9664 of 2022 in Crl.A.No.402 of 2022



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Crl.A.No.402 of 2022

RESERVED ON : 22.09.2022

PRONOUNCED ON : 19.10.2022

P.N.PRAKASH, J.
AND
RMT.TEEKAA RAMAN, J.

ORDER

P.N.PRAKASH, J.

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence dated 22.03.2022 passed by the II Additional District and Sessions Judge, Chidambaram, in S.C.No.341 of 2018 and enlarge the petitioner on bail, pending disposal of the appeal.

2. The petitioner/sole accused faced a prosecution in S.C.No.341 of 2018 before the II Additional District and Sessions Judge, Chidambaram, in S.C.No.341 of 2018 and was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment *vide* judgment and order dated 22.03.2022.



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3. Challenging the aforesaid conviction and sentence, the petitioner has preferred appeal in Crl.A.No.402 of 2022 and in the instant Criminal Miscellaneous Petition, he 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 suspected that the deceased *viz.*, Sundarapandian was having illicit intimacy with his wife and when the petitioner questioned Sundarapandian in this regard, the latter appears to have told him to advise his wife; irked at this, the petitioner is alleged to have hacked Sundarapandian in his neck on the night of 15.06.2018.

6. Mr.Sankarasubbu contended that the entire case is based on circumstantial evidence and the motive for the offence itself has not been proved, inasmuch as Deivalakshmi (P.W.15), wife of the petitioner, herself has turned hostile. He further contended that the evidence of Senthil Murugan (P.W.7), who is said to have seen the petitioner in the motorcycle of Sundarapandian, deserves to be rejected, as he is not a reliable witness. He also



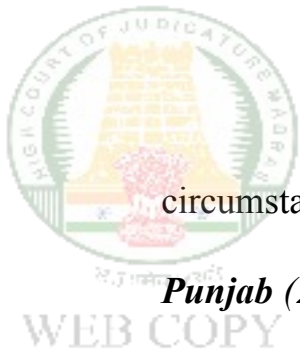
contended that there is a delay in registration of the FIR in this case.

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7. *Per contra*, the learned Additional Public Prosecutor refuted the aforesaid contentions of Mr.Sankarasubbu.

8. In this case, the incident has allegedly taken place in the house of the petitioner, as could be seen from the observation mahazar (Ex.P3) as well the evidence of Ravi Shankar (P.W.9) and Dharma Rao (P.W.10). It is the case of the prosecution that the petitioner himself surrendered to the police, after the commission of the offence and his statement was recorded. This conduct of the petitioner would be relevant under Section 8 of the Evidence Act. Senthil Murugan (P.W.7) has stated that he had seen the petitioner going in the motorcycle of Sundarapandian with bloodstains on his apparel. Appreciation of the evidence of Senthil Murugan (P.W.7), can be done only in the final disposal of the appeal.

9. Coming to the argument of Mr.Sankarasubbu *qua* the delayed registration of the FIR, to be noted, the Supreme Court has, time and again, held that delayed registration of an FIR is neither illegal nor will it make the prosecution case vitiated and that whether the delayed registration of an FIR would vitiate the prosecution case, has to be decided on the facts and



circumstances obtaining in each case. [See ***Ravinder Kumar vs. State of Punjab*** (2001) 7 SCC 690]

10. 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 and accordingly, this petition stands dismissed.

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[P.N.P., J.] [T K R,J.]
19.10.2022



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1.The II Additional District and Sessions Judge
Chidambaram

2.The Inspector of Police
Kattumannarkovil Police Station
Cuddalore District
Cr.No.231/2018

3.The Public Prosecutor
High Court, Madras



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