



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighteenth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION No.8828 of 2020

IN CRL.A.NO.538 of 2020

1.NANDALAL KEMBRAM
2.SUDHIR KERALI

[PETITIONERS/APPELLANTS/ACCUSED]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
SIRUMUGAI POLICE STATION,
COIMBATORE DISTRICT.
CRIME NO.166 OF 2016)

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.538 of 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence and enlarge the petitioners on bail in S.C. NO. 128/2018 on the file of the V Additional district and Sessions Judge, Coimbatore dated 12.09.2019 in CRL.A.NO.538 of 2020 IN CRL.MP.NO.8828/2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.538 of 2020 on the file of the High Court and upon hearing the arguments of M/S.R.SANKARASUBBU Advocate for the petitioner and of MR.R.MUNIYAPPARAJ Additional Public Prosecutor on behalf of the Respondent the court made the following order:-



ORDER

[R.HEMALATHA, J.]

WEB COPY
This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 12.09.2019 passed in S.C.No.128 of 2018 on the file of the V Additional District and Sessions Court, Coimbatore and to enlarge the petitioners on bail pending disposal of the appeal in CrI.A.No.538 of 2020.

2.The petitioners are the accused in S.C.No.128 of 2018 before the V Additional District and Sessions Court, Coimbatore, and were convicted and sentenced as follows:

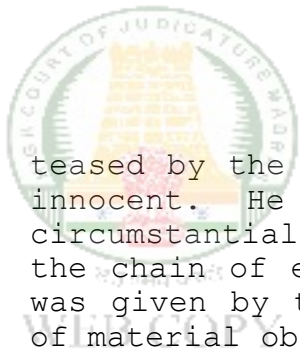
<i>S.No.</i>	<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
1.	A1 & A2	U/s.302 IPC	Life imprisonment each and pay a fine of Rs.5,000/- each in default, to undergo two months simple imprisonment each.
2.	A1 & A2	U/s.404 IPC	Rigorous imprisonment for three years each and pay a fine of Rs.1,000/- each in default, to undergo one month simple imprisonment each.

Challenging the same, the petitioners filed CrI.A.No.538 of 2020 and the present petition is filed for suspension of sentence and bail.

3.Heard Mr.R.Sankarasubbu, learned counsel for the petitioners and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

4.The case of the prosecution is that Mallika (P.W.1), wife of the deceased Sureshkumar was teased by the accused 1 & 2 ten days prior to the date of occurrence. Irked by this, the said Mallika (P.W.1) informed her husband (victim) who got infuriated and confronted both the accused and warned them. On account of this, accused 1 & 2 planned to take revenge on the victim and on 12.08.2016 at about 08.30 p.m. they took the deceased in a TVS XL heavy duty two wheeler and picked up quarrel in front of a hotel. Thereafter, they took him to a field owned by one Kandasamy (P.W.9) and attacked him with stones and caused his death.

5.Mr.R.Sankarasubbu, learned counsel for the accused contended that when the wife of the deceased herself had denied that she was



teased by the accused, the motive for murder fails and that they are innocent. He would also contend that this is a case based on circumstantial evidence and that there are several missing links in the chain of events. According to him, the extra judicial confession was given by the accused subsequent to the arrest and the recovery of material objects by the police.

6. Per contra, the learned Additional Public Prosecutor refuted all the submissions made by the learned counsel for the petitioner and contended that the prosecution had established the guilt of the appellant beyond all reasonable doubts through oral and documentary evidence. He would further contend that the entire records are ready and that the criminal appeal itself can be taken up for final hearing.

7. The accused A1 and A2 were found to be guilty of the offence under Section 302 IPC by the trial court. The said offence is serious in nature and the suspension of sentence is not a matter of right or automatic. Moreover in the instant case both the accused had also given extra judicial confession to one Senthilkumar (P.W.11) who was working as a trainer in the same company in which the present accused were also working. The trial Court, in fact had dealt with in extenso all the arguments put forth by Mr.R.Sankarasubbu, learned counsel for the accused. However, these aspects cannot be gone into in the instant petition and only at the time of final hearing these can be looked into. Since the typed set of papers is made ready the appeal itself can be disposed of at the earliest point of time.

8. At this juncture, pertinent it is 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 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 petitioners and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-

18/02/2022

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 AND SESSIONS JUDGE,
COIMBATORE DISTRICT.

2 THE INSPECTOR OF POLICE,
SIRUMUGAI POLICE STATION,
COIMBATORE DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

Order
in
CRL MP.8828/2020
in
CRL.A.538/2020
Date :18/02/2022

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CSK 21/02/2022