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Crl.M.P.No.12897 of 2022 in Crl.A.No.922 of 2022

Orders Reserved on : 26..09..2022
Orders Pronounced on : 14..10..2022

Crl.M.P.No.12897 of 2022
in
Crl.A.No.922 of 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 imposed on the petitioners by judgement and order dated 12.07.2022 passed in S.C.No.184 of 2021 on the file of the I Additional District and Sessions Court, Vellore, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners/A1 to A3 have been convicted and sentenced by the trial court as under:-

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentenced to</i>
<i>A1 to A3</i>	<i>Section 294(b) IPC</i>	<i>Simple Imprisonment for month each</i>
	<i>Section 302 r/w 34 IPC</i>	<i>Imprisonment for Life each and to a fine of Rs.5,000/- each and in default of payment of fine to undergo rigorous imprisonment for a further period of six months</i>
	<i>Sentenced imposed above were ordered to run concurrently</i>	



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3. Challenging the above conviction and sentences, the petitioners have preferred Crl.A.No.922 of 2022 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Though a common petition has been filed by all the three accused, submissions were made by Mr.P.K.Ilavarasan, learned counsel for A1 & A2 and separate submissions were made by Mr.M.Sathish Kumar, learned counsel for A3.

5. Heard Mr.P.K.Ilavarasan, learned counsel for A1 & A2/petitioners 1 and 2 herein; Mr.M.Sathish Kumar, learned counsel for A3/3rd petitioner herein and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

6. It is the case of the prosecution that one Halis Devi (P.W.8) had taken a shop on rent in the Community Hall in Ambedkar Nagar, Vellore, which was managed by A1 and A2. A1 and A2 were demanding Halis Devi (P.W.8) to



vacate the shop premises. But, since she was not vacating, A1 and A2 used to frequently quarrel with her and harassed her. When Halis Devi informed this to the deceased Pandian, he intervened and questioned A1 and A2, on account of which, enmity developed between the two sides. Pursuant to that, on 31.03.2021 around 09.30 p.m., A1, A2 & A3 picked up quarrel with Pandian and while A3 was holding Pandian, A1 and A2 cut his neck with the knives resulting in the death of Pandian.

7. Learned counsel for A1 and A2 submitted that the motive has not been proved inasmuch as Halis Devi (P.W.8) and Mathivanan (P.W.9) had turned hostile and the scribe of the complaint was not examined. The learned counsel for A3 contended that, according to the police, they recovered the mobile phone of the deceased from the accused, but, according to P.W.1, it was recovered from the place of occurrence.

8. Per contra, Mr.R.Muniyapparaj, learned Additional Public Prosecutor, refuted the aforesaid contentions.



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9. It is seen that there are three eyewitnesses to the occurrence viz., P.W.1, P.W.2 and P.W.3, who have clearly spoken about the overt acts of the accused. The findings of the trial court in para 31 of the judgement is to the effect that the testimony of P.Ws.1 to 3 corroborates each other. As regards the contention that P.W.7 and P.W.9 have turned hostile, in a case based on direct evidence, motive assumes very less significance. As regards the non examination of the scribe of the complaint (Ex.P1) and the recovery of the mobile phone, these aspects can be gone into only during the final hearing of the appeal.

10. 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 Punjab**² 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

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



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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.”

11. Therefore, we are of the opinion, that it is not a fit case for the grant of suspension of sentence and bail to the petitioners. Accordingly, this criminal miscellaneous petition is dismissed. Whatever is stated above is only for deciding this petition.

[P.N.P., J]

[TKR,J.]

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