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Crl.M.P.Nos.13010 & 10287 of 2022

Orders Reserved on : 13..10..2022
Orders Pronounced on : 28..10..2022

Crl.M.P.Nos.13010 & 10287 of 2022
in
Crl.A.No.490 of 2021

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

COMMON ORDER

P.N.PRAKASH, J.

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioners by judgement and order dated 22.09.2021 passed in SC.No.138 of 2019 by the learned I Additional District and Sessions Judge, Coimbatore, and to enlarge the petitioners on bail pending disposal of the appeal.

2. There were totally five accused in the case. A1, A3, A4 and A5 who are the petitioners in Crl.O.P.No.13010 of 2022, and A2, who is the petitioner in the other petition in Crl.O.P.No.10287 of 2022, were convicted and sentenced as under by the learned I Additional District and Sessions Judge, Coimbatore by judgement and order dated 22.09.2021 in S.C.No.138 of 2019:-



Accused	Provision under which convicted	Sentenced to
Manikandan @ Poosari Mani [A1] Anandaraj @ HappyAnandraj [A2] Naveen Kumar @ Naveen [A3]	<i>U/s 395 r/w 398 IPC</i>	<i>Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- in default of payment of fine to undergo simple imprisonment for a further period of three months</i>
	<i>U/s 396 IPC</i>	<i>Imprisonment for Life and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a further period of three months</i>
	<i>U/s 506(II) IPC</i>	<i>Rigorous Imprisonment for two years and to pay a fine of Rs.500/- in default of payment of fine to undergo Simple Imprisonment for a further period of three months</i>
Sasimohan [A4] and Mohanbabu @ Mohan [A5]	<i>U/s 395 r/w 398</i>	<i>Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- in default of payment of fine to undergo simple imprisonment for a further period of three months</i>
	<i>U/s 396 IPC</i>	<i>Imprisonment for Life and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a further period of three months</i>
	The aforesaid sentences were ordered to run concurrently.	

3. Challenging their convictions and sentences, the petitioners/A1 & A2 have filed Crl.A.No.490 of 2021 along with these instant criminal miscellaneous petitions seeking suspension of sentence and bail.

4. Heard Mr.Bharanidharan, learned counsel for the petitioners in Crl.M.P.No.13010 of 2022 and Mr.V.M.R.Rajendran, learned counsel for the



petitioner in Crl.M.P.No.10287 of 2022 and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

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5. This is a case of murder for gain. It is the case of the prosecution that on 22.08.2018, Manikandan @ Poosari Mani (A1) and his two friends waylaid two persons, viz., Vishnu (not examined) and Gokulakannan (P.W.18), threatened them at knife point, snatched their motorcycle bearing Regn. No.TN-37-CK-1302, used the motorcycle for their purposes and in the night around 09.15 p.m. they waylaid Nelson (P.W.1) and the deceased Babu at knife point, checked their pockets, brutally stabbed Babu and caused his death.

6. The learned counsel for the respective petitioners submitted that even in the FIR as well in the copy of the Accident Register, the involvement of only three persons in the offence has been disclosed, whereas 5 persons have been convicted. They attacked the evidence of P.W.1 with his previous statement under Section 164 Cr.P.C.

7. Per contra, the learned Additional Public Prosecutor submitted two separate lists of previous cases against A1 and A2 respectively which show

that A1 is a history-sheeter rowdy and has got six cases to his credit, most of



which, are robbery cases and A2 has got three cases to his credit.

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8. On coming to know of the above said fact, the learned counsel for A1/1st petitioner in Crl.M.P.No.13010 of 2022 sought permission of this court to withdraw the petition for bail qua A1.

9. Now, coming to the case of the co-accused, just because the FIR disclosed only the involvement of the three persons, it does not mean that the others could not be prosecuted. The involvement of the two other accused came to the light subsequently and they were also part of the gang of robbers. With regard to the contradictions in the evidence of P.W.1 *vis-a-vis* his statement under Section 164 Cr.P.C., we find that P.W.1 was not confronted with his previous statement under Section 145 of the Evidence Act.

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

¹ (2008) 5 SCC 230

² 1977 SCC (Cri) 559



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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.”

11. Therefore, we are of the opinion, that this is not a fit case for the grant of suspension of sentence and bail to the petitioners. Accordingly, these criminal miscellaneous petitions are dismissed. It is made clear that whatever stated above is only for the limited purpose of deciding these miscellaneous petitions.

[P.N.P., J]

[TKR., J]

28..10..2022

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P.N.PRAKASH, J.
and



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RMT.TEEKAA RAMAN, J.

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