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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.01.2022
Pronounced on	27.01.2022

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

and

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.M.P.No.13647 of 2021

in

Crl.A.No.74 of 2021

G.Natarajan

.... Petitioner/Accused-5

Versus

The State represented by
The Inspector of Police,
CBCID,
Cuddalore.

.... Respondent/complainant

Prayer: Criminal Miscellaneous Petition is filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed in S.C.No.123 of 2016 dated 18.01.2021 in the Court of Principal and Distirct Sessions Judge, Cuddalore and enlarge the petitioner on bail pending disposal of the above Crl.A.No.74 of 2021.

For Petitioner : Mr.R.C.Paul Kanagaraaj

For Respondent : Mr.R.Muniyapparaj,

Addl. Public Prosecutor (crl.side)

ORDER

R.N.MANJULA, J.

This criminal miscellaneous petition has been preferred seeking to suspend the sentence imposed on the petitioner/A-5 by judgement and order dated 18.01.2021 passed in S.C.No.123 of 2016 by the learned Principal District and Sessions Judge, Cuddalore and to enlarge the petitioner on bail pending disposal of the Appeal.



2. The petitioner/appellant, who is arrayed as A-5 in S.C.No.123 of 2016 before the learned Principal District and Sessions Judge, Cuddalore, and was convicted and sentenced on 18.01.2021 as under:

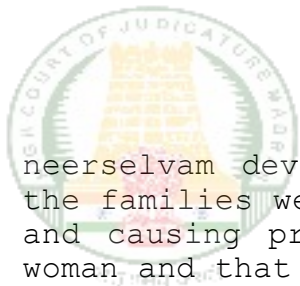
S. No	Provision under which convicted	Sentence
1	Section 302 r/w 34 (2 counts) IPC	To undergo Life Imprisonment and imposed to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment of one year for each counts.
2	Section 147 IPC	To undergo Rigorous Imprisonment for one year and imposed to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment of one month.
3	Section 341 (2counts) IPC	To undergo Simple Imprisonment for one month for each counts.

The aforesaid sentences were ordered to run concurrently.

3. Challenging the above conviction and sentence, the petitioner/ A-5 has filed CrI.A.No.74 of 2021 along with the criminal miscellaneous petition for suspending the sentence and releasing the petitioner/ A-5 on bail.

4. Heard Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner (A5) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. The defacto complainant is the son of the deceased Kaliyamoorthy. The case of the prosecution is that from the year 1999 onwards there was a dispute between the Sarangapani/defacto complainant's family and Panneerselvam/A-1's family in connection with the administration of a Temple. Further, Panneerselvam also assumed that the complainant Sarangapani developed intimacy with his sister's daughter Sumathi and made her pregnant and thereafter refused to marry her. So Panneerselvam convened a panchayat and forced the deceased Kaliyamoorthy to marry his sister's daughter Sumathi to Sarangapani, but Kaliyamoorthy refused for the said marriage proposal. Hence Pan-



neerselvam developed enmity with Kaliyamoorthy and his family. Both the families were in the habit of giving complaints against each other and causing problems. In the meanwhile, Sarangapani married another woman and that had escalated the bitterness.

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6. On 08.05.2005, Kaliyamoorthy and his cousin Ravichandran went to their lands on the northern bank of Vellar River at Periyamedu for ploughing; till mid night they did not return. According to the prosecution on 08.05.2005, at about 12 hours, A-1 to A-5 formed an unlawful assembly between themselves and in furtherance of common intention they went to the field where the deceased Kaliyamoorthy and Ravichandran were ploughing. On seeing the accused chasing the bullocks Kaliyamoorthy rushed to the spot. At that time Panneerselvam/A-1 covered the face of Kaliyamoorthy with a black shawl and kicked him down and compressed his face on the sand; A-3 sat on Kaliyamoorthy and A-5 caught hold of his legs to prevent him from moving and thereby all the accused caused the death of the Kaliyamoorthy. When the deceased Ravichandran came running behind Kaliyamoorthy, A2 covered his face with another black shawl, kicked him down and compressed his face on the sand. A-4 sat on Ravichandran and A-5 caught hold of his legs to prevent him from moving and thereby caused his death. Since the deceased Kaliyamoorthy and Ravichandran did not return home, Sarangapani along with his relatives went in search of them; only on the next day morning at about 6.00 hours he found their dead bodies floating on the Vellar Pond in suspicious circumstances. Because of the previous enmity the complainant suspected the involvement of Panneerselvam and others and lodged a police complaint.

7. The learned counsel for the petitioner submitted that the petitioner / A-5 is innocent and he is not involved in any offence as alleged by the prosecution; initially the case was registered under Sec.174 (3) for doubtful death; only after getting a direction from this Court the investigation was transferred to CBCID; an earlier complaint given before the Bhuvankiri police on the same allegation but the same was closed; the respondent police did the investigation in the same line, but attributed motive against the accused; there is no eyewitness and the case is based on the circumstantial evidence. It is unbelievable that PW.2 and PW.3 did not come forward to disclose the occurrence for 7 years; there is every likelihood that the judgement of the Sessions Court would get reverse in the Appeal, hence the sentence imposed against the petitioner/A-5 should be suspended and the petitioner should be released on bail.

8. On getting instructions, the learned Additional Public Prosecutor appearing for respondent/State vehemently opposed to suspend the sentence. He submitted that the respondent Police had unearthed the truth despite it was concealed for years; the motive and other circumstances would be connecting the accused to the occur-



rence; the learned Sessions Judge had given due credence to the evidence of the prosecution and rightly convicted the accused; the offence committed by the accused is a heinous one and hence the petition should be dismissed.

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9. This is a case of double murder. The investigation got stalled for long. Only after an order of this Court passed in Cr-1.OP.No.25518/2006 dated 18.01.2007, the case took momentum and it was transferred to the respondent/CBCID police for investigation. The previous animosity between the families of the deceased and the accused was spoken by the prosecution witnesses. There was a continual misunderstanding between the deceased family and the accused and they were complaining each other by giving frequent police compliants.

10. The learned Sessions Judge has dealt the last seen theory on the basis of the evidences of PW.2 and PW.3. However the learned counsel for the petitioner submitted that the evidence of prosecution is unreliable and untrustworthy. The judgment has been passed only on 18.01.2021. Though the Appeal was admitted, it cannot be claimed that the petitioners are automatically entitled to get the relief of suspension of sentence. Though the delay that might happen in taking up the appeal can be a reason for suspending the sentence, the same yardstick cannot be applied to all cases irrespective of the facts and circumstances of the cases. Hence the merits of the petition of suspend the sentence should be analyzed on case to case basis.

11. In this context it is relevant to refer the Judgment of Hon'ble Supreme Court rendered in Sidhartha vashisht @ Manu sharma vs. State of (NCTof Delhi) [(2008) 5 SCC 230], the Supreme Court 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)

12. In the case in hand the manner in which the offences were committed and its gravity and the other consequences cannot be simply overlooked. If the petitioner /A-5 is confident of the merits of his Appeal it is always open to him to request for an early hearing and that can be considered favourably. However on merits we are not convinced to suspend the sentence and release the accused on bail.

Accordingly, this Criminal Miscellaneous Petition in CrI.MP.No.13647 of 2021 is dismissed.

-sd/-
27/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL AND
DISTRICT SESSIONS JUDGE, CUDDALORE.

2 THE INSPECTOR OF POLICE,
CBCID, CUDDALORE.

3 THE OFFICER INCHARGE
SUB JAIL, CHIDAMBARAM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



5 THE RECORD KEEPER,
CRIMINAL SECTION, HIGH COURT, MADRAS.

WEB COPY C.C. to M/S.R.C.PAUL KANAGARAJ Advocate on payment of necessary charges

Order

in
CRL MP.13647/2021

in
CRL A.74/2021

Date :27/01/2022

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JPA 28/01/2022