



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.11897 of 2021

IN CRL.A.No.199 of 2021

PERUMAL

[PETITIONER / APPELLANT / ACCUSED]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
T12, POONAMALLEE POLICE STATION,
CRIME NO.464 OF 2018.
CHENNAI CITY.

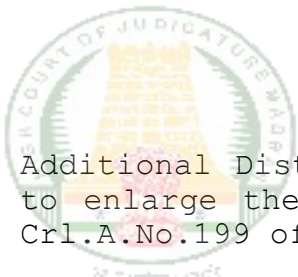
[RESPONDENT / COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Suspend the Sentence imposed on the petitioner in SC.No.116 of 2018 by the III Additional District and Session Judge Thiruvallur @ Poonamallee by a Judgment dated 08.04.2021 and enlarge the petitioner on bail pending disposal of the above Crl.A.No.199 of 2021.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of MR.V.GOPINATH, Senior Counsel for M/S A.M.RAHAMATH ALI, Advocate for the petitioner and of M/S.R.MUNIYAPPARAJ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

ORDER
[R.HEMALATHA, J.]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 08.04.2021 passed in S.C.No.116 of 2018 on the file of the III



Additional District and Sessions Court, Thiruvallur @ Poonamallee and to enlarge the petitioner on bail pending disposal of the appeal in Crl.A.No.199 of 2021.

2.The petitioner, the first accused in S.C.No.116 of 2018 before the III Additional District and Sessions Court, Thiruvallur @ Poonamallee was convicted and sentenced as follows:

S.No.	Conviction	Sentence
1.	U/s. 294 (b) IPC	Rigorous imprisonment for three months and pay a fine of Rs.1,000/- in default, to undergo two weeks rigorous imprisonment
2.	U/s. 302 of IPC	Life imprisonment and pay a fine of Rs.5,000/- in default, to undergo six months rigorous imprisonment.

Challenging the same, the petitioner filed Crl.A.No.199 of 2021 and the present petition is filed for suspension of sentence and bail.

3.Heard Mr.V.Gopinath, learned Senior counsel assisted by Mr.A.M.Rahamath Ali, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

4.The case of the prosecution is that on 18.04.2018 at about 10.50 p.m. there was an altercation between the deceased Hariramakrishnan @ Hariramar, S/o. Natarajan and the first accused Perumal when the deceased was standing with his friends near Government Hospital, Poonamallee. Thereafter, A1 (Perumal) summoned A2 (Immanuel Sathishkumar) and A3 (Subash Kanna). All the three accused with a common intention to eliminate Hariramakrishnan @ Hariramar attacked him on his head with a stone, as a result of which, the deceased fell down. He was immediately rushed to Government Hospital, Poonamallee and thereafter referred to Rajiv Gandhi Government Hospital, Chennai. However, he succumbed to injuries on 25.04.2018.

5.Mr.V.Gopinath, learned Senior counsel assisted by Mr.A.M.Rahamath Ali, learned counsel for the petitioner would contend that sentence imposed on the accused - 1 has to be suspended on the following grounds :

- i. There are lot of inconsistencies and contradictions in the evidence of prosecution witnesses.



ii. There is a delay in lodging FIR to the police and sending the same to the concerned jurisdictional Magistrate.

iii. Dr. Ezhil @ Vaanija (P.W.15) who had recorded the Accident Register (Ex.P7) had clearly deposed that the friend of the deceased informed him that the deceased was attacked by three unknown persons and that this has not been taken into account by the trial Court.

iv. The stone was seized from a public place and it did not have any blood stains.

v. The Investigating Officer did not properly investigate the case by examining the adjacent shop owners in and around the scene of occurrence.

6. Per contra, the learned Additional Public Prosecutor refuted all the submissions made by the learned counsel for the petitioner. It is also contended that all the records are ready for final hearing and that the criminal appeal itself can be taken up for final hearing.

7. In the instant case, the accused was found to be guilty of an offence under Section 302 IPC by the trial court.

8. At the outset, it may be observed that all the above contentions of the learned counsel for the petitioner can be seen only during the final hearing of the case and not in the present bail petition. Similarly, the discrepancies and the contradictions in the evidence of various witnesses that were pointed out by the learned counsel for the petitioner cannot be considered in this petition. This is a case in which the eyewitnesses also have narrated the manner in which Hariramakrishnan @ Hariramar was done to death by the present petitioner.

9. 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



WEB COPY

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."

10. 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 petitioner (A1) 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 III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, THIRUVALLUR AT
POONAMALLEE.

2 THE INSPECTOR OF POLICE,
T12, POONAMALLEE POLICE STATION,
CHENNAI CITY.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S A.M.RAHAMATH ALI Advocate on payment of necessary charges

Order
in
CRL MP.11897/2021
in
CRL A.199/2021

Date :18/02/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

JPA 21/02/2022