



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighteenth day of February Two Thousand Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION No.12578 of 2021

in CRL A.348 OF 2020

ALEX @ ALEX PANDIAN

[PETITIONER/APPELLANT]

Vs

STATE REP. BY ITS
THE INSPECTOR OF POLICE,
TOWN CENTRAL POLICE STATION,
UDHAGAMANDALAM, NILGIRIS DISTRICT,
CRIME NO.656 OF 2009.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.348 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence on the Judgement passed by the Learned Principal District and Sessions Judge, Coimbatore in S.C.No.242 of 2010 dated 02.03.2020 in so far as the Accused No.6 is concern in Crime No.656 of 2009 on the file of respondent police and grant bail to him pending disposal of the above CRL A.348 OF 2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.348 OF 2020 on the file of the High Court and upon hearing the arguments of MR.S.SUKUMAR Advocate for the petitioner and of M/S R.MUNIYAPPARAJ, GOVT.ADVOCATE(CRL.SIDE) on behalf of the Respondent the court made the following order:-

O R D E R

P.N.PRAKASH, J.

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence dated 02.03.2020 passed in S.C. No.242 of 2010 on the file of the Principal District and Sessions Court, Coimbatore, insofar as Alex @ Alex Pandian (A.6) and grant bail to him, pending disposal of the appeal.



2 The petitioner faced a prosecution along with 5 others in S.C. No.242 of 2010 before the Principal District and Sessions Court, Coimbatore, and was convicted and sentenced on 02.03.2020 as under:

Provision under which convicted	Sentence
Section 120-B read with 302 IPC	Imprisonment for life and fine of Rs.5,000/-, in default, to undergo six months imprisonment
Section 302 read with 34 IPC	Imprisonment for life and fine of Rs.5,000/-, in default, to undergo six months imprisonment

The aforesaid sentences were ordered to run concurrently.

3 Challenging the aforesaid conviction and sentences, the petitioner has filed CrI.A.No.348 of 2020 and in the instant Criminal Miscellaneous Petition, he seeks suspension of sentence and bail.

4 Heard Mr. S. Sukumar, learned counsel for the petitioner and Mr. R. Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5 It is the case of the prosecution that Sridhar @ Babu (A.1) is a practising advocate; he had some financial dealings with the deceased Sekar, on account of which, some misunderstandings arose between them; hence, in order to eliminate Sekar, Sridhar (A.1) hired Murali @ Signal Murali (A.2), Karthikeyan @ Karthik (A.3), Prabhakaran @ Arokia Jayaprabakaran (A.4), Shibu @ Shibu Peter (A.5) and Alex @ Alex Pandian (A.6), the petitioner herein; accordingly, on 27.06.2009, around 8.15 a.m., Sekar was indiscriminately attacked in broad daylight by the hirelings, including the petitioner herein.

6 Mr. Sukumar, learned counsel for the petitioner, submitted that the incident had taken place on 27.06.2009 and the petitioner was arrested a month later, as if he was seen in Ooty. He further contended that the call detail records of the mobile phone (Exs.P.50 to P.59) cannot be relied upon, in the absence of the certification under Section 65-B of the Evidence Act. It is his further submission that the photographs of the accused were shown to the witnesses, prior to the Test Identification Parade and therefore, no reliance can be placed on the Test Identification Parade report. Finally, he contended that the classmate of the wife of Sekar was present in Ooty, on the day prior to the incident, about which, there was no investigation by the police.

7 Per contra, the learned Additional Public Prosecutor refuted the aforesaid contentions and submitted that an advocate had engaged these hirelings to eliminate Sekar, pursuant to which, Sekar was brutally attacked in broad daylight in the canteen and done to death;



the petitioner being one of the hirelings, if released on bail, would not be available later.

8 This Court gave its anxious consideration to the rival submissions.

9 It is true that the petitioner was arrested after a month from the date of incident. But, that, by itself, cannot have any effect on the prosecution case, which only shows that the petitioner was in abscondence after the incident and it took a month for the police to trace him and arrest him.

10 As regards the contention regarding the call detail records (Exs.P.50 to P.59), the trial Court itself has not placed reliance on these exhibits, as could be seen from paragraph 3 of the trial Court judgment. In this case, the hirelings, including the petitioner, were identified by P.W.8 to P.W.18, both in the Test Identification Parade as well in the Court. Further, the allegation that P.W.8 to P.W.18 were shown the photographs of the suspects, prior to the Test Identification Parade, is an aspect which cannot be gone into in an application for suspension of sentence and bail.

11 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 v. 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."

12 In a case of this nature where a gruesome murder has taken place and the accused have managed to successfully protract the trial



from 2010 to 2020, it would not be feasible to grant the relief of suspension of sentence and bail.

In view of the foregoing reasons, this criminal miscellaneous petition for suspension of sentence and bail is dismissed as being bereft of merits.

-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 PRINCIPAL DISTRICT AND
SESSIONA JUDGE, COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE INSPECTOR OF POLICE,
TOWN CENTRAL POLICE STATION,
UDHAGAMANDALAM, NILGIRIS DISTRICT,

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.M.RAVI SHANKAR Advocate on payment of necessary charges

Order

in
CRL MP.12578/2021

in CRL A.348 OF 2020

Date :18/02/2022

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RVR 23/02/2022