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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Thursday, the Twenty Seventh day of January Two Thousand Twenty Two
PRESENT

The Hon`ble Mr Justice P. N. PRAKASH
and

The Hon`ble Ms Justice R.N. MANJULA

CRIMINAL MISCELLANEOUS PETITION No.13128 of 2021

IN CRL.A.No.197 of 2021

1 MECHARRI @ SEVVATHAN

[PETITIONER /APPELLANT / ACCUSED]

2 SAKTHIVEL

Vs

THE STATE REP.BY

[RESPONDENT / COMPLAINANT]

THE INSPECTOR OF POLICE,
KRISHNAGIRI TALUK POLICE STATION,
KRISHNAGIRI DISTRICT.
CR.NO.778 OF 2017.

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence imposed in S.C.No.30 of 2019 dated 23/12/2021 passed by the Court of Additional Sessions Judge, Krishnagiri and enlarge the petitioner on bail, pending disposal of the above Crl.A.No.197 of 2021 on the file of this Honourable Court and thus render justice.

Order: This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the Petitioner and of M/S.R.MUNIYAPPARAJ, Advocate on behalf of the Respondent the court made the following order:-

(Made by P.N.PRAKASH, J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 23.02.2021 passed in S.C.No.30 of 2019 on the file of the Additional Sessions Court, Krishnagiri and to enlarge the petitioners on bail, pending disposal of the above appeal.

2. The petitioners, who were the second and third accused in S.C.No.30 of 2019 before the Additional Sessions Court, Krishnagiri, were convicted and sentenced as follows on 23.02.2021:



S.No.	Provision under which convicted	Sentence
Mecharri Sevvathan (A2) Sakthivel (A3)	Section 120-B IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment, each.
	Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment, each.
	Section 201 r/w 302 IPC	Seven years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment, each.

The aforesaid sentences were ordered to run concurrently.

3. Challenging the aforesaid conviction and sentences, the petitioners (AA 2 and 3) have filed Crl.A.No.197 of 2021 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.R.Sankarasubbu, learned counsel for the petitioners (AA 2 and 3) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the deceased Krishna was known to Gopika Mamtha Devi (A1) and they loved each other. When Krishna approached the parents of Gopika Mamtha Devi (A1) for getting their permission to marry her, they refused. Subsequently, Gopika Mamtha Devi (A1) got married to one Murali. Even after marriage, Krishna continued his affair with Gopika Mamtha Devi (A1) and got money from her. Since Krishan started to indulge in unlawful activities like robbery, Gopika Mamtha Devi (A1) disliked him and severed her connection with him. Krishna blackmailed Gopika Mamtha Devi (A1) and tortured her to give him money. So, Gopika Mamtha Devi (A1) decided to get rid of Krishna with the help of the petitioners (AA 2 and 3). While so, on 06.12.2017 around 2.00 p.m. at the house of Gopika Mamtha Devi (A1), all the three accused conspired together and hatched a criminal conspiracy to murder Krishna. As per the plan, the petitioners (AA 2 and 3) murdered Krishna on the morning of 09.12.2017 by attacking him with aruval and knife.

6. The learned counsel for the petitioners (AA 2 and 3) submitted that this Court, vide order dated 08.10.2021 in Crl.M.P.No.6628 of 2021 in Crl.A.No.197 of 2021, granted suspension of sentence and bail to the co-accused in this case viz., Gopika Mamtha Devi (A1).



7. As submitted by the learned counsel for the petitioners (AA 2 and 3), this Court had granted suspension of sentence and bail to Gopika Mamtha Devi (A1) as she was not directly involved in the offence and that apart, she was being allegedly blackmailed by Krishna. Hence, the petitioners (AA 2 and 3) cannot claim parity.

8. The learned counsel for the petitioners (AA 2 and 3) further submitted that most of the witnesses have turned hostile. However, the same cannot be a good ground for granting suspension of sentence and bail to the petitioners (AA 2 and 3), because, under Section 154 of the Evidence Act, 1872, the evidence of the hostile witnesses cannot be completely ignored.

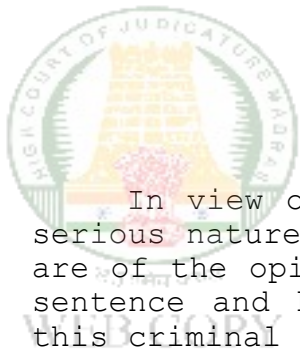
9. That apart, the murder in this case has been caused in a very gruesome and heinous manner, in that, the first petitioner (A2) had attacked Krishna with an aruval on his head; when Krishna fell down, the second petitioner (A3) cut Krishna with a knife; again, the first petitioner (A2) cut Krishna's neck with an aruval, ensuring that the neck is separated from his body.

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 Punjab² 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."

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



In view of the above reasoning and taking into consideration the serious nature of allegations against the petitioners (AA 2 and 3), we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioners (AA 2 and 3) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-
27/01/2022

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 ADDITIONAL SESSIONS JUDGE,
KRISHNAGIRI.

2 THE INSPECTOR OF POLICE,
KRISHNAGIRI TALUK POLICE STATION,
KRISHNAGIRI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

C.C. to M/S.R.SANKARASUBBU Advocate on payment of necessary charges

Order

in
CRL MP.13128/2021
in
CRL.A.No.197 of 2017

Date :27/01/2022

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