



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Fourth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice A.A. NAKKIRAN

CRIMINAL MISCELLANEOUS PETITION No.13797 of 2021

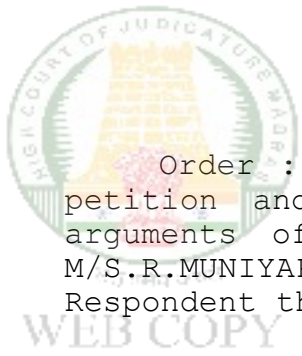
IN CRL A.448 of 2019

MINOR KUROSS @ VENKATTAGIRI [PETITIONER/APPELLANT/ACCUSED]
S/O.LATSUMAIYA,
THERPET VILLAGE,
DENKANIKOTTAI TALUK,
KRISHNAGIRI DISTRICT.
(NOW CONFINED IN CENTRAL PRISON-1,
PUZHAI, CHENNAI)

Vs

STATE BY [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
DENKANIKOTTAI CIRCLE,
THALI POLICE STATION,
KRISHNAGIRI DISTRICT.
(CRIME NO.121/2002
ON THE FILE OF THE THALI P.S,)

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 against the petitioner on 26.03.2019 in S.C.No.7/2007 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Ponnammalle, Chennai and release the petiitoner on Bail till the disposal of the Criminal Appeal in Crl.A.No.448 of 2019.



Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S. S.NADHIYA, Advocate for the petitioner and of M/S.R.MUNIYAPPARAJ, Additional Public Prosecutor 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 imposed on the petitioner vide judgment and order dated 26.03.2019 in S.C. No.7 of 2017 on the file of the Sessions Court for Exclusive trial of Bomb Blast Cases, Poonamallee, Chennai and to release the petitioner on bail, till the disposal of the criminal appeal.

2 This is the third bail application filed by the petitioner herein. The first bail application filed by the petitioner in Crl.M.P. No.10054 of 2019 was dismissed by this Court on 09.03.2020. In the second bail application filed by him in Crl.M.P. No.4670 of 2020, this Court, vide order dated 18.08.2020, on humanitarian grounds, granted parole, with escort, for a period of one week, i.e., 22.08.2020 to 28.08.2020, enabling him to attend his daughter's marriage. However, on 01.09.2020, this Court recalled the earlier order dated 18.08.2020 and closed the second bail petition by recording the factum of the petitioner's unwillingness to go on leave with escort.

3 It is the case of the prosecution that the deceased Venkatesan was a Member of M.C.C. political party, from where, he defected, joined the D.M.K. and became the Chairman of Thali Panchayat, which did not find acceptance from his erstwhile partymen. Therefore, they conspired to liquidate him. Initially, an attempt was made on his life which proved futile, in connection with which, the police registered a case for the offence under Section 307 IPC against some of the accused, who are accused in this case.

4 While so, on 08.05.2002, A.1 to A.14 conspired to murder Venkatesan and in pursuance of the said conspiracy, they attacked him with deadly weapons like knife, country bomb, gun and acid in Thali Bus Stand, resulting in his death.

5 The petitioner herein, along with the co-accused, was charge sheeted in P.R.C. No.24 of 2002 in the Court of the District Munsif-cum-Judicial Magistrate, Dhenkanikottai and since the petitioner absconded, the case against him was split up and on committal, he was tried in S.C. No.7 of 2007 by the Special Court for Bomb Blast Cases, Poonamallee and was convicted and sentenced vide judgment and order dated 26.03.2019 as under:



Provision under which convicted	Sentence
S.120-B read with S.302IPC	Life imprisonment and fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment
S.148 IPC	2 years simple imprisonment and fine of Rs.500/-, in default, to undergo 3 months simple imprisonment
S.302 IPC	Life imprisonment and fine of Rs.2,000/-, in default, to undergo 6 months simple imprisonment
S.3 of the Explosive Substances Act, 1908	10 years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo 6 months simple imprisonment

6 Challenging the aforesaid conviction and sentences, the petitioner filed CrI.A. No.448 of 2019 and seeks suspension of sentence and bail in the present criminal miscellaneous petition.

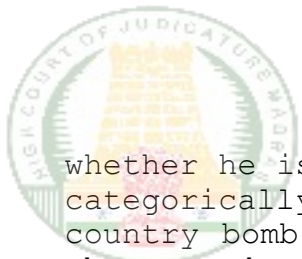
7 Heard Mrs. S. Nadhiya, learned counsel representing Mr.P.Pugalenth, learned counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

8 The respondent police have filed their counter affidavit strongly objecting to the grant of suspension of sentence and bail to the petitioner.

9 Mrs. Nadhiya, learned counsel for the petitioner, took this Court to the charges framed against the petitioner and submitted that in charge no.3, it is stated that Pazhanichamy (A.4) had hurled a bomb on Venkatesan, on account of which, he suffered injuries, whereas, the evidence of Dr. Kuruviah Chetty (P.W.28), postmortem doctor, shows that Venkatesan had suffered only cut injuries.

10 On a reading of the evidence of Subbulakshmi (P.W.36), forensic science examiner, it is seen that the bomb that was hurled was a low intensity one and it is normally used to create a scare so that the assailant can cash in on that and attack the intended target physically. This appears to have been done in this case and therefore, the absence of bomb blast injuries on the body of Venkatesan cannot lead to the inference that no bomb was used at all.

11 Ms. Nadhiya contended that Naga @ Nagappa (A.6) has been granted bail. In our opinion, while dealing with a petition for suspension of sentence and bail, the Court has to see the gravity of the offence against each of the accused and decide on merits as to



whether he is entitled to the relief. In this case, Madesh (P.W.4) has categorically deposed that the petitioner herein had also hurled a country bomb. Thus, it is clear that he had actively participated in the attack. That apart, be it noted, this Court has dismissed the suspension of sentence and bail application of Krishnappa (A.1) and Narayanan @ Narayanappa (A.3) in CrI.M.P. No.5567 of 2020 in CrI.A. No.512 of 2019 vide order dated 13.08.2021, in which also, the grant of suspension of sentence and bail to Naga @ Nagappa (A.6) has been discussed by this Court and ultimately, the relief of sentence suspension and bail was not granted to Krishnappa (A.1) and Narayanan @ Narayanappa (A.3).

12 In the instant case, the fact remains that the petitioner herein was in abscondance and therefore, the case against him had to be split up, which has to be borne in mind by this Court while considering the present application. Further, there is no change in circumstance warranting grant of relief of sentence suspension and bail.

13 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."

14 That apart, this Court is ready to take up the main appeal itself for hearing, provided the parties are ready.

15 In view of all the foregoing reasons, this Court is of the view that this is not a fit case for grant of suspension of sentence and bail.



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

WEB COPY

-sd/-

24/02/2022

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 SESSIONS COURT FOR EXCLUSIVE
TRIAL OF BOMB BLAST CASES, PONNAMALLE,
CHENNAI.

2 THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, THENKANIKOTTAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
DENKANIKOTTAI CIRCLE,
THALI POLICE STATION,
KRISHNAGIRI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON-I,
PUZHAL, CHENNAI.

C.C. to M/S. P.PUGALENTHI Advocate on payment of necessary charges

Order

in

CRL MP.13797/2021

in

CRL A.448/2019

Date :24/02/2022

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

RW 03/03/2022