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Crl.M.P.(MD)



'22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Sixteenth day of September Two Thousand and Twenty Two
PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU
and
The Hon`ble Mr.Justice N.ANAND VENKATESH

Crl.M.P.(MD) No.8935 of 2022
in
Crl.A.(MD) No.474 of 2022

MURUGESAN

... PETITIONER / APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ERWADI DARGAH POLICE STATION, RAMANATHAPURAM.
IN CRIME NO.57/2011.

... RESPONDENT / RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the Appellant/Accused No.1 passed in SC No.117/2018, on the file of the Learned Principal Sessions Judge, Ramanathapuram, dated 16/2/2022 and enlarge him on bail pending disposal of the Crl.A.

Prayer in Crl.A.(MD) No.474 of 2022:

To call for the records in SC.No.117 of 2018 on the file of Principal Sessions Judge, Ramanathapuram and set aside the order of conviction and sentence dated 16.02.2022.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.N.ANANTHA PADMANABHAN, Advocate for M/S.APN LAW ASSOCIATES for the petitioner and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

The appellant (A1) herein, who was convicted for offence under Sections 302 and 201 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for one year for offence under Section 302 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default to undergo six months simple imprisonment for offence under Section 201 IPC, in S.C.No.117 of 2018 dated 16.02.2022 on the file of the Principal Sessions Judge, Ramanathapuram, has filed the above criminal appeal. Pending appeal, the present petition has been filed to suspend the sentence and to enlarge the petitioner on bail.



2. Heard the learned counsel for the petitioner and the Additional Public Prosecutor for the respondent.

3. The case of the prosecution is that A1 had illicit intimacy with A-5 and they joined together along with A2 to A4 and hatched a criminal conspiracy and the deceased was done to death. According to the case of the prosecution, the deceased, who went to the election booth on 14.04.2011, did not return back home. His bones were recovered on 31.03.2016. This recovery is said to have taken place on the confession given by the appellant (A1) in the presence of P.W.-17.

4. This is a case which revolves around circumstantial evidence. Except the appellant all the other accused persons were given the benefit of doubt and they were acquitted from all the charges. The circumstances that were put against the appellant are,

(a) the extra judicial confession is said to have been given by the appellant to the Village Administrative Officer [P.W.-16] and Thalayari [P.W.-37];

(b) The confession given by the appellant, based on which, the remains of the deceased was recovered in the presence of P.W.-17 on 31.03.2016 and

(c) the appellant not being able to explain the fact of the discovery of the bones of the deceased based on his confession, when he was questioned under Section 313 Cr.P.C.

5. Insofar as the extra judicial confession is concerned, both P.W.-16 and P.W.-37 did not support the case of the prosecution and they were treated hostile. The trial Court has convicted the appellant only on the basis of the recovery of the remains of the deceased based on the confession of the appellant and in the absence of any plausible explanation given by the appellant, when he was questioned under Section 313 Cr.P.C. The trial Court has also taken into consideration the fact that the body of the deceased was perfectly identified through superimposition.

6. The solitary ground that has been put against the appellant remains to be the evidence of P.W.17. The learned counsel for the petitioner brought to the notice of this Court the confession, which is said to have been made by A-2, wherein, he speaks about the discovery of the two-wheeler, which he came to know through a news item in a newspaper on 27.03.2016. The bones of the dead body were also identified from the same place. The confession of A-2 as against the evidence given by P.W.17 requires serious consideration of this Court. That apart, this case requires appreciation of evidence since the appellant has been convicted only based on circumstantial evidence. There are many grounds that requires the consideration of this Court and it will not be possible for this Court to take up the appeal in the near future.

7. In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No.117 of 2018 dated 16.01.2020 subject to the following conditions:



(I) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate, No.II, Ramanathapuram;

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(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and

(iii) The petitioner shall appear before the respondent police every Monday at 10.30 a.m., for a period of 8 weeks. After completion of the period reporting before the respondent police, the petitioner shall report before the Judicial Magistrate Court, No.II, Ramanathapuram; on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-

16/09/2022

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16/09/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL SESSIONS JUDGE, RAMANATHAPURAM
 - 2 THE JUDICIAL MAGISTRATE NO.II, RAMANATHAPURAM.
 - 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
RAMANATHAPURAM DISTRICT.
 - 4 THE INSPECTOR OF POLICE
ERWADI DARGAH POLICE STATION, RAMANATHAPURAM.
 - 5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 - 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S. APN LAW ASSOCIATES Advocate SR.No.10127.

ORDER

IN

Crl.M.P.(MD) No.8935 of 2022
in Crl.A.(MD) No.474 of 2022
Date :16/09/2022

MK/SBN/SAR.IV/16.09.2022/3P/8C

<https://www.mhc.tn.gov.in/judis>