



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

Friday, the Eighteenth day of November Two Thousand and Twenty Two

PRESENT

**The Hon`ble Mr.Justice M.S.RAMESH
and**

The Hon`ble Mr.Justice N.ANAND VENKATESH

CRL MP(MD) No.10771 of 2022

IN

CRL A(MD) No.553 of 2022

1 AYYAPPAN
2 ANNAMALAI
3 CHANDRABOSS

... APPELLANTS/ACCUSED Nos.3 TO 5

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
PATTUKOTTAI SUB DIVISION,
PERAVOORANI POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.229/2017).

... RESPONDENT/COMPLAINANT

2 CHINNAIAH

... PROPOSED 2nd RESPONDENT/
DEFACTO COMPLAINANT

(R2 IS IMPEADED AS PER ORDER OF THE COURT
DATED 14/10/2022 IN CRL.MP(MD).12293/2022
IN CRL.A(MD).553/2022 by JNBJ and NAVJ)

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 by the Judgement dt,26/7/2022 made in SSC No.68/2018 on the file of I Additional District and Sessions Judge(PCR), Thanjavur and enlarge the petitioners on bail pending disposal of the above appeal.

PRAYER IN CRL.A(MD).553/2022:

Pleased to call for the records relating to the judgment dated 26.07.2022 made in S.S.C.No.68 of 2018 on the file of I Additional District and Sessions Judge (PCR), Thanjavur and set aside the



conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the accused.

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.M.AJMAL KHAN, Senior Advocate for M/S.AJMAL ASSOCIATES, for the Appellants and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the 1st Respondent and none appeared for the 2nd Respondent side either in person or by an advocate, the court made the following order:-

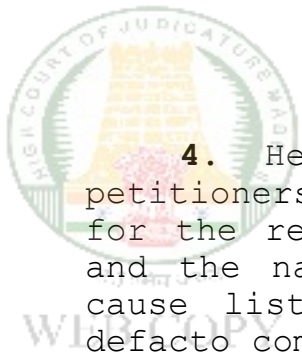
(Order of the Court was made by N.ANAND VENKATESH, J.)

This petition has been filed by A3 to A5 seeking for suspension of sentence imposed on the petitioners, by judgment and order dated 26.07.2022 passed in S.S.C.No.68 of 2018 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur, and to enlarge the petitioners on bail pending disposal of the above appeal.

2. The case of the prosecution is that the deceased Boominathan is the son of PW1 and he had an illicit intimacy with one Allirani (A2). On 09.09.2017, at about 11.10 p.m., a phone call was received by PW1 informing him that his son has been attacked and immediately he rushed to the scene of crime and found his son being attacked and he sustained injuries all over the body. Thereafter, the deceased was taken to Meenakshi Mission Hospital at Tanjore and ultimately, the said Boominathan succumbed to the injuries on 10.09.2017 at about 10.15 p.m. Based on the complaint given by PW1, an FIR came to be registered in Crime No.229 of 2017 as against two named accused persons and others for the offence under Sections 147, 148 and 307 of IPC. Later, it was altered and the offence under Section 302 of IPC was included.

3. The Court below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, convicted and sentenced the petitioners in the following manner:

Rank	Offence	Sentence
A3 to A5	148 of IPC r/w Section 3 (2) (va) of the SC/ST (POA) Act	Two (2) years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three (3) months rigorous imprisonment
A3 to A5	302 of IPC	Life Imprisonment and fine of Rs.10,000/-, in default, to undergo one (1) year rigorous imprisonment



4. Heard the learned Senior Counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent police. The defacto complaint has been served and the name of the defacto complainant was also printed in the cause list and there was no representation on the side of the defacto complainant.

5. The Court below has acted upon oral testimony of PW1 and PW2, who are the parents of the deceased Boominathan. These witnesses have deposed as if they have seen the occurrence. However, immediately after the incident, the earliest document, that is available is the complaint that was given by PW1 before the respondent police, which was marked as Ex.P1.

6. On carefully going through the complaint, it is seen that PW1 had only stated that he received a phone call on 09.09.2017 at about 11.18 p.m., and a lady spoke over the phone and informed PW1 that his son has been injured. Thereafter, PW1 along with his wife went to the scene of crime and found his son lying unconscious. When this is the earliest version given by PW1 with regard to the incident, the evidence given by PW1 and PW2 before the Court as if they witnessed the entire incident, requires a serious consideration by this Court. The Court below, has also convicted and sentenced the accused persons only based on the eye-witness account of PW1 and PW2.

7. In the considered view of this Court, a prima facie case has been made out and the petitioners have already suffered incarceration for nearly four months and there are no bad antecedents against the petitioners. It was also brought to our notice that the fine amount has already been paid by the petitioners and it will take some more time to take up the Criminal Appeal for final hearing. In view of the same, this Court is inclined to suspend the sentence imposed by the Court below in S.S.C.No.68 of 2018 dated 26.07.2022 subject to the following conditions:-

- (I) The petitioners shall execute bond for a sum of Rs.25,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judge, PCR Court, Thanjavur;
- (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 cards or Bank pass Books to ensure their identity; and



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(iii) The petitioners 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 petitioners shall report before the learned Judge, PCR Court, Thanjavur, on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.

sd/-

18/11/2022

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22/11/2022

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

TO

- 1 THE I ADDITIONAL DISTRICT & SESSIONS JUDGE (PCR),
THANJAVUR.
- 2 THE JUDGE, PCR COURT, THANJAVUR.
- 3 THE DEPUTY SUPERINTENDENT OF POLICE,
PATTUKOTTAI SUB DIVISION,
PERAVOORANI POLICE STATION,
THANJAVUR DISTRICT.
- 4 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.AJMAL ASSOCIATES Advocate SR.No.13336

ORDER IN

CRL MP(MD) No.10771 of 2022
IN CRL A(MD) No.553 of 2022
Date :18/11/2022

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SA/SSS/SAR. /22.11.2022/4P/7C