



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

Friday, the Second day of December 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.12063 of 2022

IN

CRL A(MD) No.625 of 2022

1 NAGARAJAN

2 THIRUMALAI

... PETITIONERS/APPELLANTS/
ACCUSED 1 & 2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
THIRUCHULI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.196/2018.

... RESPONDENT/RESPONDENT/
COMPLAINANT

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 passed in SC No.77/2019 dt.6/9/2022 on the file of the Honble Additional District and Sessions Court, Virudhunagar and enlarge the petitioners on bail pending disposal of this Appeal.

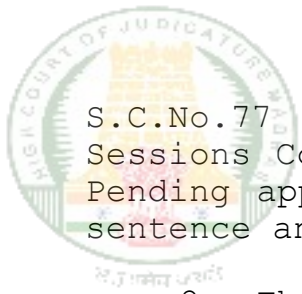
PRAYER IN CRL A(MD) 625/2022:

Pleased to call for the records and to set aside the judgment passed in S.C.No.77 of 2019 dated 06.09.2022 on the file of the Hon`ble Additional District & Sessions Court, Virudhunagar.

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

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

The petitioners herein, who were convicted for offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment, by judgment and order dated 06.09.2022 passed in



S.C.No.77 of 2019 on the file of the Additional District Sessions Court, Virudhunagar, have filed the above criminal appeal. Pending appeal, the present petition has been filed to suspend the sentence and to enlarge the petitioners on bail.

2. The case of the prosecution is that there was previous enmity between the deceased and the petitioners. On 27.09.2018 at about 7.30 p.m., the deceased is said to have waylaid by the accused persons and he was attacked with wooden logs, as a result of which, the deceased sustained head injuries and he succumbed to the injuries. There are totally three accused persons in this case. A3, who was a juvenile, was tried separately before the Juvenile Justice Board.

3. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

4. The prosecution had examined P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7 to P.W.15 as eyewitnesses in this case. P.W.7 to P.W.15 did not support the case of the prosecution and therefore, the entire case hinges upon the eyewitness account of P.W.1, P.W.4, P.W.5 and P.W.6.

5. The learned counsel for the petitioners submitted that none of the eyewitnesses as projected by the prosecution could have seen the incident, since P.W.15 in his evidence clearly stated that he only informed about the incident to P.W.1, P.W.4, P.W.5 and P.W.6 and thereafter they came to the scene of crime. It was also pointed out that the nature of injuries that were sustained by the deceased and which was spoken by the postmortem Doctor, who was examined as P.W.17, shows that it could not have been caused with wooden logs. That apart, the incident had taken place on 27.09.2018 and the postmortem was conducted only on 28.09.2018 at about 1.10 p.m. and at that point of time, the rigor mortis had set in only in the upper limbs. According to the learned counsel for the petitioners, the postmortem was conducted after nearly 16 hours and if really the incident had taken place at 7.30 p.m., the rigor mortis must have been set in in the entire body, since it normally sets in between 3 to 12 hours.

6. Taking into consideration the facts and circumstances of the case and also the fact that a prima facie case has been made out and there are no bad antecedents against the petitioners, this Court is inclined to consider the petition for suspension of sentence. There are various grounds that have to be taken into consideration in the present criminal appeal and it will take some more time for this Court to hear the appeal finally. It is stated that the petitioners have paid the fine amount.

7. In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No. 77 of 2019 dated 06.09.2020 subject to the following conditions:



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- (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 Additional District and Sessions Court, Virudhunagar.
- (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 petitioners shall appear before the concerned Court once in fortnight 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 his absence, as directed by the trial Court.

sd/-

02/12/2022

/ TRUE COPY /

02/12/2022

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

TO

1 THE ADDITIONAL DISTRICT & SESSIONS JUDGE, VIRUDHUNAGAR.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
THIRUCHULI POLICE STATION,
VIRUDHUNAGAR DISTRICT.4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.SANKAR GANESH N Advocate SR.No.14282

ORDER INCRL MP(MD) No.12063 of 2022
IN

CRL A(MD) No.625 of 2022

Date :02/12/2022

RR

SA/VR/SAR.1/02.12.2022/3P/6C

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