



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

Wednesday, the Nineteenth day of January Two Thousand and Twenty Two

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) Nos.11773 & 11774 of 2021
IN
CRL A(MD) No.539 of 2021

KUMAR @ SIVA KUMAR

... PETITIONER/ APPELLANT NO.1
IN CRL MP(MD) No.11773 of 2021

TAMIL SELVAN

... PETITIONER/ APPELLANT NO.2
IN CRL MP(MD) No.11774 of 2021

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
THOTTIYAM POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
CRIME NO.17 OF 2013.

... RESPONDENT/ RESPONDENT
IN BOTH THE PETITIONS

Prayer in CRL MP(MD)No.11773/ 2021 :

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Execution of sentence by granting bail in SC.No.155 of 2013 dt.15.12.2021 on the file of the II-Additional District and Sessions Judge,Tiruchirappalli pending disposal of the above Criminal Appeal.

Prayer in CRL MP(MD)No.11774/ 2021 :

To Suspend the Execution of sentence by granting bail in SC.No.155 of 2013 dt.15.12.2021 on the file of the II-Additional District and Sessions Judge,Tiruchirappalli pending disposal of the above Criminal Appeal.

Prayer in CRL A(MD) No.539 of 2021:

To admit this appeal on file, to call for the records from the lower court in S.C.No.155 of 2013 on the file of II Additional District and Sessions Judge, Tiruchirappalli and set aside the judgment dated 15.12.2021 by acquitting the accused and by allowing the Appeal.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, Senior Counsel for Mr.K.PRABHU, petitioner in both the petitions and of MR.K.SANJAY



GANDHI, Government Advocate on behalf of the Respondents in both the petitions, the court made the following order:-

These petitions have been filed to suspend the sentence imposed by the learned II Additional District and Sessions Judge, Tiruchirappalli in S.C.No.155 of 2013 dated 15.12.2021, till the disposal of the appeal.

2.The offence against the petitioners is that on 13.01.2013 at about 9.30 a.m. when the deceased and the complainant were vending vegetables, the petitioners indulged in quarrel with witnesses Muruges and Maruthambal. When the same was questioned by the neighbour Dharmaraj Accused No.1 snatched the aruval from Dharmaraj and attacked him. The other accused also attacked the deceased and the said Dharmaraj died on 17.01.2013. A case was registered against the petitioner and others under Sections 294(b), 323 and 506 (ii) IPC and 302 IPC against Accused No.1 and against Accused No.2,3 and 4 under Sections 294(b), 323 IPC in Crime No.17 of 2013.

3.The case was taken on file in S.C.No.155 of 2013 on the file of the learned II Additional District and Sessions Judge, Tiruchirappalli. The learned Sessions Judge acquitted Accused Nos.3 and 4 and convicted Accused Nos.1 and 2. The learned Sessions Judge acquitted Accused Nos.1 and 2 under Sections 294(b) & 506(ii) IPC and convicted them by altering the offence from 302 into 304(i) IPC. Accused No.1 was convicted under Section 323 (2 counts) and was imposed a fine of Rs.1,000/- each, in default to undergo three months simple imprisonment and also was convicted under Section 304 (i) IPC and was sentenced to undergo rigorous imprisonment for a period of 10 years and was imposed a fine of Rs.5,000/-, in default to undergo 2½ years rigorous imprisonment. Accused No.2 was convicted under Section 304(i) of IPC and was sentenced to undergo rigorous imprisonment for a period of 10 years and was imposed a fine of Rs.5,000/-, in default to undergo 2½ years rigorous imprisonment.

4.Against the conviction and sentence the petitioners filed an appeal in Crl.A.(MD).No.539 of 2021 along with the appeal these petitions were filed for suspension of sentence.

5.On the side of the petitioner it is stated that it was the deceased who attacked the petitioners and the petitioners also sustained injuries and lodged a complaint against the deceased. The records of the counter case was not produced by the prosecution. The injuries of Accused No.1 and 2 were not explained by the prosecution. The weapon was not with the accused. It was the deceased who having the weapon. The deceased got only simple injury. The postmortem report reveals that the deceased was only having a small injury on the fore head. All other injuries mentioned in the report are clinical injuries. Since the injuries got septic, the deceased died. There are much more points for argument in the appeal



6. On the side of the prosecution it is stated that the petitioners are the prime accused in the case. Due to previous enmity they created problem in the market. When the same was questioned by the deceased, they snatched the aruval from the deceased, who was selling sugarcane and attacked the deceased. Effective treatment was given to the deceased. The prosecution has examined 31 witnesses and marked 24 documents and one material object and proved the case beyond reasonable doubt. The judgment is a recent one and prayed the petition to be dismissed.

7. It is seen that the judgment is dated 15.12.2021 and it is only a recent judgment. The offence is serious in nature. In the above circumstances, this Court is not inclined to suspend the sentence at the present. Hence, these criminal miscellaneous petitions are dismissed.

sd/-

19/01/2022

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TRICHY.
- 2 THE INSPECTOR OF POLICE
THOTTIYAM POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
- 3 THE OFFICER INCHARGE,
SUB JAIL, MUSIRI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.11773 & 11774
of 2021

IN

CRL A(MD) No.539 of 2021

Date :19/01/2022

TM

MK/PN/SAR.II/27.01.2022/3P/5C