



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

Tuesday, the Eleventh day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
and

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

Crl.M.P.[MD]Nos.1606 of 2023 in Crl.A(MD)No.4 of 2023
and

Crl.M.P(MD)No.745 of 2023 in Crl.A(MD)No.56 of 2023

1 VIJAYAKUMAR

2 MUTHURAJA

3 GOPI

... PETITIONERS/APPELLANTS
/PETITIONERS/ACCUSED NOS. 6 TO 8
IN Crl.M.P.[MD]No.1606 of 2023

GOPAL

...PETITIONER/APPELLANT/ACCUSED NO.3
IN Crl M.P(MD)No.745 of 2023

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
KENIKARAI POLICE STATION,
KENIKARAI,
RAMANATHAPURAM DISTRICT.
CRIME NO.318 OF 2015.

... RESPONDENT/RESPONDENT/RESPONDENT
IN BOTH PETITIONS

PRAYER IN CRL MP(MD)NO.1606 of 2023 IN CRL A(MD)NO.4 of 2023:

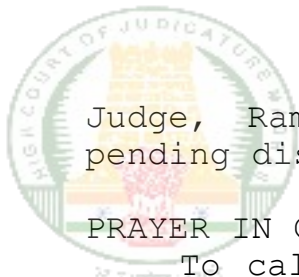
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed by the Learned Principal Sessions Judge,Ramanathapuram in SC.No.120 of 2018 dt.8.12.2022 and enlarge the Petitioners/Appellants on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No. 4 OF 2023:

To call for the records and set aside the order of conviction and sentence passed in S.C.No. 120 of 2018 dated 08.12.2022 on the file of the Learned Principal Session Judge, Ramanathapuram and allow this appeal and acquit the Appellants/Accused.

Prayer in CRL MP(MD). 745/ 2023 in CRL A(MD)NO. 56 of 2023 :

To suspend the sentence imposed on the petitioner/Appellant passed in SC.No.120 of 2018, on the file of the learned Principal Sessions Judge, Ramanathapuram.



Judge, Ramanathapuram dated 08.12.2022 and enlarge him pending disposal of the instant criminal appeal.

PRAYER IN CRL A(MD)No. 56 OF 2023:

To call for the records in S.C.No. 120 of 2018 on the file of the Learned Principal Session Judge, Ramanathapuram and allow this appeal and set aside the sentence and conviction awarded to A1 to A5 by the order dated 08.12.2022.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.ANDIRAJ P, Advocate for the petitioner in CRL MP (MD)No. 1606 of 2023 and of MR.N.ANANTHAPADMANABHAN, Senior Counsel for M/s APN LAW ASSOCIATES for the petitioner in CRL MP(MD)No. 745 OF 2023 and of MR.E.ANTONY SAHAYA PRABAHAR, Additional Public Prosecutor on behalf of the Respondents in both cases, the court made the following order:-

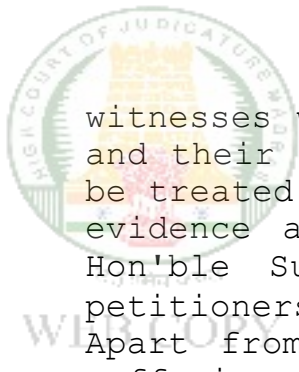
[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

Since the petitioners in these two petitions are arrayed as accused/A3&A6 to A8 in the same crime number, ie., Crime No.318 of 2015 on the file of the respondent police, these two petitions are taken up together and disposed of by way of common order.

2. These Criminal Miscellaneous Petitions have been filed by the petitioners/A3,A6,A7 & A8, who have been convicted for offence under Section 120B of IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.10,000/-each, in default to undergo Simple Imprisonment for a further period of two years, for suspension of the sentence imposed by the learned Principal Sessions Judge, Ramanathapuram, in S.C.No.120 of 2018 by judgment dated 08.12.2022.

3. Heard Mr.N.Ananthapadmanabhan, Senior Counsel for M/s.APN Law Associates, appearing for the petitioner/A3, Mr.P.Andiraj appearing for the petitioners/A6, A7 & A8 and Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor appearing for the respondent police.

4. Mr.N.Ananthapadmanabhan, learned Senior Counsel for M/s.APN Law Associates, appearing for the petitioner/A3 submitted that A1 to A8 conspired to murder the deceased on account of the previous prolonged land dispute, without meeting point and engaged A1 & A2 to commit murder and in result, A1 & A2 had done to death of the deceased on the fateful day, ie., on 12.07.2015. To prove the conspiracy, the prosecution relied the evidence of P.W9 & P.W10. Eventhough, number of circumstances were established to disbelieve their evidence, the learned trial Judge was pleased to erroneously accept the same and convicted the accused for the charge of criminal conspiracy under Section 120B IPC. He further submitted that both



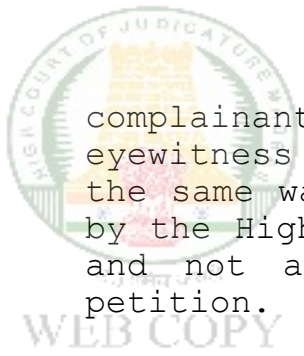
witnesses were examined after 1½ months from the date of offence and their statement reached the Court belatedly and his evidence to be treated with suspicion. For that reason also, he pleaded that the evidence are planted one and he also placed the judgment of the Hon'ble Supreme Court reported in **2016 (16) SCC 418**. So, the petitioners established *prima facie* case to suspend the sentence. Apart from that, the petitioner/A3 is 83 years old and has been suffering from all age old illness in the prison and considering his health condition, this Court may be considered for the suspension of sentence as a special case on the health ground.

5. Mr.P.Andiraj, learned counsel appearing for the petitioners/A6, A7 & A8, in addition to the above submission made by the learned Senior counsel appearing for A3/the petitioner in Crl.M.P(MD)No.745 of 2023, further submitted that the petitioners are also placed on similar footing of A3. The Inspector of Police altered the offence under Section 120B IPC only after some time and to suit the offence, he examined the witnesses P.W-9 & P.W-10 to prove the conspiracy and hence, there was no justification of relying of the witness of P.W-9 and P.W-10.

6. Per Contra, learned Additional Public Prosecutor appearing for the State submitted that the specific evidence of P.W-9 is that he immediately disclosed the above fact to the investigation officer, who conducted the investigation at primitive stage, that too, in her cross-examination of the accused. The learned Additional Public Prosecutor further submitted that there is explanation regarding the delay in recording the statement and reaching the statement to the Court and the same is to be appreciated at the time of final hearing and he placed reliance on the following principle laid down by the Hon'ble Supreme Court in the case of **Abu Thakir and others v. State of Tamilnadu** reported in **2010 (5) SCC 91**:

"34. There is no quarrel with that proposition and the importance of requirement of sending the vital documents to the court without any delay. But the delay may occur due to variety of facts and circumstances. Delay in dispatch of the said documents by itself may not be fatal to the prosecution in each and every case. The question as to what is the effect of delay in sending the vital documents to the court may have to be assessed and appreciated on the facts and circumstances of each case. It is not possible to lay down that delay in dispatch of the vital documents in each and every case defeats the prosecution's case"

The learned Additional Public Prosecutor also submitted that eventhough P.W-9 and P.W-10 were examined belatedly and their statements reached the Court belatedly, but their evidence was cogent and without any embellishment and also the judgment relied by the learned Senior Counsel appearing for A3, is rest on its own facts. In that case, the appeals were filed against the acquittal judgment, passed by the High Court, by the State as well as the



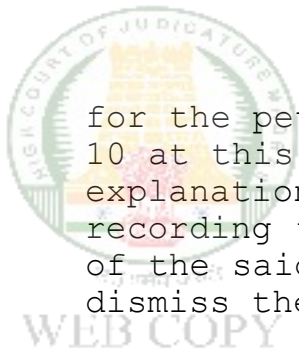
complainant. The High Court acquitted the accused disbelieving the eyewitness evidence, who are examined with considerable delay and the same was not explained. Even that exercise of appreciation done by the High Court only at the time of the final hearing of the case and not at the time of hearing of the suspension of sentence petition.

7. Considering the rival submissions made by both side counsels and the grounds stated in these suspension petitions, this Court has no strong reason to accept the contention of the learned counsels for the petitioners/A3, A6 to A8 to disbelieve the evidence of P.W-9 and P.W-10, as accepted by the learned trial Judge by rendering the re-appreciation of evidence at the stage of the suspension of sentence which is beyond the jurisdiction. The delay in examination of witnesses and delay in reaching their statement to the Court was also considered by the trial Court by accepting the explanation of the prosecution agency. More particularly, when their evidence is cogent and trustworthy and the explanation for the delay was accepted by the trial Court, this Court does not find any reason to differ the same at this stage.

8. It is revealed from the records that there was a strong motive between the family of the deceased and the accused. Further, P.W-9 and P.W-10 also deposed about the conspiracy to commit murder of the deceased. Apart from that, in the FIR itself, the complainant specifically stated that due to the previous motive, the accused conspired to commit murder of the deceased and hence, the submission of Mr.Andiraj, learned counsel for the petitioners/A6 to A8 that the police altered the offence under Section 120B IPC only after some time and planted the witnesses P.W-9 and P.W-10 to suit the offence, has no legs to stand. So, this Court *prima facie* satisfied with the conclusion of the learned trial Judge in placing reliance of the evidence of P.W-9 and P.W-10 at this stage.

9. The submissions of the learned counsel that the belated examination and the reaching of the statement to the Court belatedly are concerned, the judgment cited by the learned Senior Counsel in **2016 (16) SCC 418** itself has answer, wherein it is specifically stated that "*it is well settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The Court may rely on such testimony if they are cogent and credible and the delay is explained to the satisfaction of the Court.*"

10. It is well settled principle that consideration of bail before the completion of trial and suspension of sentence of imprisonment after the conviction is different for the reason that the trial Court accepted the deposition of witnesses, which are at the stage of myth before the conclusion of trial. In result, this Court has no reason to accept the submission of the learned counsel



for the petitioners to disbelieve the evidence of the P.W-9 & P.W-10 at this stage upon the re-appreciation of evidence along with the explanation furnished by the prosecution agency for delay in recording the statement of P.W-9 and P.W-10 as well as the reaching of the said statement to the Court. Hence, this Court is inclined to dismiss the suspension petition insofar as A6 to A8 is concerned.

11. However, considering the age of the petitioner/A3 in Crl.M.P.(MD)No.745 of 2023, ie. 83 years, as well as his sufferings from the age old ailment inside the prison, this Court is inclined to suspend the sentence imposed as against him/A3 with certain conditions.

12. At the same time, the plea of parity raised on behalf of the petitioners/A6 to A8 in Crl.M.P(MD)No.1606 of 2023 cannot be countenanced when they are all aged about 36, 40 and 42 years respectively and also there is no plea of health related issues of these petitioners/A6 to A8.

13. In the result,

1. Crl.M.P(MD)No.1606 of 2023 is dismissed.

2. Crl.M.P(MD)No.745 of 2023 is ordered and the imprisonment ordered by the trial Court through the impugned judgment dated 08.12.2022 is suspended subject to the following conditions:-

- i. The petitioner/A3 shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Ramanathapuram;
- 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;
- iii. The petitioner/A3 shall not enter into the village till the disposal of the appeal ; and
- iv. The petitioner/A3 shall appear before the learned Principal Sessions Judge, Ramanathapuram, once in a month, the first such appearance he shall make insofar as April 2023 is concerned, on 17.04.2023 at 10.30 a.m. and subsequently every month on the first working day of English Calender he shall appear before the said Court at 10.30 a.m., till the disposal of the appeal.

sd/-

11/04/2023

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11/04/2023

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



1 THE PRINCIPAL SESSIONS JUDGE,
RAMANATHAPURAM.

2 THE INSPECTOR OF POLICE
KENIKARAI POLICE STATION, KENIKARAI,
RAMANATHAPURAM DISTRICT.

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/s APN LAW ASSOCIATES, SR.No.5672 (I)

ORDER
IN
Crl.M.P.[MD]Nos.1606 of 2023
in Crl.A(MD)No.4 of 2023
and
Crl.M.P(MD)No.745 of 2023
in Crl.A(MD)No.56 of 2023
Date :11/04/2023

PKP/SSS/SAR- /11.04.2023/ **6P/6C**