



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

Monday, the Twenty Seventh day of March Two Thousand and Twenty
Three

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PRESENT

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

CRL MP(MD) No.13950 of 2022
IN
CRL A(MD) No.738 of 2022

MUTHUKALEESWARAN

... APPELLANT/ACCUSED NO.2

Vs

STATE THROUGH,
THE INSPECTOR OF POLICE,
RAMANATHAPURAM B1 TOWN POLICE STATION,
RAMANATHAPURAM DISTRICT.
(CRIME NO.382/2012)

... 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 imposed against the petitioner in SC No.37/2021 dt.27.09.2022 on the file of the Learned Additional District and Sessions Court, Ramanathapuram and enlarge him on bail pending disposal of above Criminal Appeal.

PRAYER IN CRL A(MD) No.738 of 2022:-

To call for the records relating to the judgment in S.C.No.37/2021 dated 27.09.2022 on the file of the Learned Additional District and Sessions Court, Ramanathapuram.

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.SUBASH BABU.M, Senior Counsel for M/S.SUSI KUMAR.C, Advocate for the petitioner and of M/S.E.ANTONY SAHAYA PRABAHAR, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

(Order of the Court was made by **R.SURESH KUMAR, J.**)

This petition has been filed to suspend the sentence imposed against the petitioner in S.C.No.37 of 2021, dated 27.09.2022 on the file of the Additional District and Sessions Court, Ramanathapuram and enlarge him on bail pending disposal of the Criminal Appeal.



2. There are totally five accused in the case. After the trial Court acquitted A3, A4 and A5. A1 died during the trial. Therefore, the trial Court has convicted only the petitioner / A2 into life by invoking Section 304(ii) IPC.

3. In this context, Mr. M. Subash Babu, learned Senior Counsel appearing for the petitioner has submitted that, based on the evidence of P.W.2, such a conviction has been inflicted against the petitioner / A2. However, the questions as to whether during the identification parade, it has been properly undertaken and whether the said A2 was identified, are to be answered.

4. Heard Mr. E. Antony Sahaya Prabakar, learned Additional Public Prosecutor appearing for the respondent, who would submit that since there has been two eye witnesses i.e., P.W.2 and P.W.3, who are the co-travellers along with the deceased, their evidence was taken up by the trial Court. As there has been specific overtact against the present petitioner / A2, since he was liable to be punished, such a punishment was awarded by the trial Court through the impugned judgment. Hence, the petitioner herein is not entitled to seek for suspension of sentence during the pendency of the appeal, he contended.

5. We have considered the submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

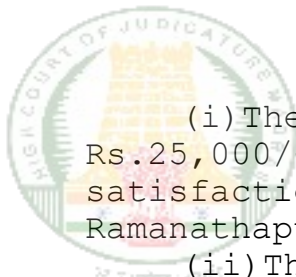
6. Insofar as the conviction imposed against the petitioner / A2 is concerned, that has been made by the trial Court under Section 304(ii) IPC.

7. But the aforesaid Section reveals that, if at all any culpable homicide not amounting to murder is committed, punishment can be awarded under Section 304(i) and 304(ii) IPC as the case may be, where the trial Court if chosen to inflict Part 1 of 304 IPC, maximum life imprisonment can be inflicted, however, under Part 2 of 304 IPC maximum sentence that can be inflicted against the present petitioner / A2 against whom such offence is proved, is only 10 years imprisonment.

8. When the trial Court has chosen to inflict the punishment against the petitioner / A2 under Section 304(ii) IPC, maximum punishment since has been restricted to 10 years, on what basis life conviction has been made against the petitioner is to be examined by this Court during the final hearing of the appeal.

9. In view of the said *prima facie*, where the flaw is noticed by this Court, we are inclined to entertain this petition and to suspend the sentence imposed against the petitioner / A2. Accordingly, this petition is ordered and the imprisonment ordered by the trial Court through the impugned judgment is suspended

https://www.hcjd.madras.gov.in/judis the following conditions:-



(i)The petitioner 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 Judicial Magistrate No.I, 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; and

(iii)The petitioner shall appear before the learned Judicial Magistrate No.I, Ramanathapuram, once in a month, the first such appearance shall be made insofar as March, 2023 is concerned, on 30.03.2023 at 10.30 a.m. and subsequently, on the first working day of every English Calendar month he shall appear before the said Magistrate at 10.30 a.m. until further orders and if he is not able to appear before the said Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the said Court on any other day in lieu of the date of his absence, as directed by the said Court.

sd/-

27/03/2023

/ TRUE COPY /

29/03/2023

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

MYR

TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANATHAPURAM.

2 THE JUDICIAL MAGISTRATE NO.I, RAMANATHAPURAM.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE,
RAMANATHAPURAM B1 TOWN POLICE STATION,
RAMANATHAPURAM DISTRICT.

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

+1 CC to M/s.C.SUSIKUMAR, Advocate (SR-4939[I] dated 27/03/2023)

ORDER

IN

CRL MP(MD) No.13950 of 2022

IN

CRL A(MD) No.738 of 2022

Date :27/03/2023