



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

Friday, the Twenty Eighth 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 MP(MD) No.13879 of 2022
in
CRL A(MD) No.449 of 2022

MOHANDASS

... Petitioner / Appellant

Vs

STATE BY

THE INSPECTOR OF POLICE

C-3, S.S. COLONY (LAW AND ORDER) POLICE STATION,
MADURAI DISTRICT.

(CRIME NO. 518 OF 2016.)

... Respondent / Respondent

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 on the Petitioner / Appellant / Accused No.1 herein by the Court of Sessions Judge, Mahalir Neethimandram, Madurai by judgment dt.12.4.2022 and made in Sessions Case No.19 of 2017 and enlarge him on bail pending disposal of the above Criminal Appeal.

Prayer in CRL A(MD). 449/ 2022 :

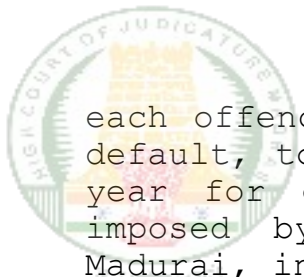
To call for the records and set aside the judgment of the lower Court made in Sessions Case No.19 of 2017 on the file of the Court of Sessions Judge, Mahalir Neethimandram, Madurai dated 12.04.2022 and acquit the Appellant herein from the above said charges.

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.S.ANANTHA NARAYANAN, Senior Counsel for M/S.V.PURUSHOTHAMAN, Advocate for the petitioner and of Mr.E.ANTONY SAHAYA PRABAHAR, Additional Public Prosecutor on behalf of the Respondent. the court made the following order:-

Reserved on : 20.04.2023
Pronounced on : 28.04.2023

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

This Criminal Miscellaneous Petition has been filed by the petitioner/A1, who has been convicted for the offence under Sections 120(B) and 302 IPC and sentenced to undergo Life Imprisonment for



each offence and to pay a fine of Rs.25,000/- for each of: In default, to undergo Simple Imprisonment for a further period of one year for each offence, to suspend the sentence of imprisonment imposed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.19 of 2017 by judgment dated 12.04.2022.

WEB COPY

2. The case of the prosecution is that the petitioner is the husband of the deceased. In spite of the objection raised by her parents, the deceased fell in love with the petitioner and they got love marriage on 29.10.2001. Out of the wedlock, they have got three children, who are examined as P.W5, P.W6 and P.W.7 and finally, she had some constrained relationship with the petitioner. Hence she filed a petition for divorce before the Family Court, Madurai. The petitioner consistently threatened her to withdraw the divorce petition, otherwise he would kill her by pouring petrol and set fire. That being the situation, on 03.05.2016, the above said divorce proceedings was posted for hearing. Thereafter, the petitioner engaged and instigated A2 and A3 to set fire on her. After the completion of the hearing of the case, when the deceased was returned and entered into her house, on his instigation, A2 & A3 after throwing chilli powder on her face, poured petrol and set fire. In the result, she was sustained burn injuries and admitted in hospital and she gave the complaint-Ex.P1 with a specific overtact against the petitioner that he was present in the scene of occurrence and instigated, A2 and A3 to pour petrol and set fire on her. As per the instigation of A1, A2 and A3 said to have caused injuries by pouring petrol on her and set fire on her.

3. After that, the investigation officer recorded the dying declaration of the deceased and completed the investigation and filed the final report for the alleged offence under Sections 120 (b) and 302 IPC against A1, A2 and A3. Accused No.3 was died during the pendency of the trial.

4. The trial Court, after considering the evidence including the children, convicted the accused under Sections 302 read with 120 (b) IPC. Aggrieved over the same, the petitioner filed this appeal. Pending appeal, He filed this petition to suspend the sentence of imprisonment raising the following grounds:

In the second dying declaration recorded by the Judicial Magistrate, there is no implication of the petitioner and the first dying declaration, which was alleged to be given to the police officers is highly doubtful and the statement was reached with inordinate delay. The thumb impression found in Ex.P1 and toe impression in the dying declaration recorded by the Judicial Magistrate created the suspicion over the receipt of the complaint and registration as alleged by the prosecution. In the AR copy also, they stated that two persons set fire on her and hence, there is *prima facie* case to suspend the sentence imposed by the trial Court



on parity with the suspension of sentence granted by this in respect of A2.

5. Per contra, the learned Additional Public Prosecutor submitted that in the case of multiple dying declarations, the Hon'ble Supreme Court issued detailed guidelines in 2018 (8) SCC 779, more particularly in para 32. In the case of multiple dying declaration, earlier dying declaration can be accepted along with the other circumstances and he further submitted that other circumstances in this case is that his children P.W.5, P.W.6 and P.W.7 categorically deposed that their father told that he would cause the death of their mother by pouring petrol. Apart from that, the marriage was taken place in the year 2001 and according to the deceased, her father gave number of aid to the petitioner to run the family. In spite of that he caused cruelty to the deceased. Hence, the deceased was constrained to file the divorce OP.

6. The grant of bail to the Accused No.2 in the above case is not improve the petitioner's case on the ground that even the instigation itself a separate offence and without his instigation A2 and A3 have no role to done to death. Under the said circumstances, the petition deserves for dismissal and further the discrepancy and the improvement and the delay in reaching the complaint etc., are the materials for the appreciation of evidence at the time of final hearing.

7. This Court considered the rival submissions of both parties to the proceedings. From the record, it is clear that the petitioner was a driver of the deceased's father. The deceased in spite of her status and the position of her family entered into love marriage with the petitioner in the year 2001 with utmost trust upon him. From the date of marriage, there was a continuous contribution from the father of the deceased for running their family life. Even without satisfying the contribution made by her father, the petitioner made a quarrel with the deceased and also from record, it is revealed that he also caused to cruelty to her which resulted in filing of the HMOP for divorce. During the pendency of the petition, the petitioner frequently threatened the deceased to withdraw the case, and further threatened to kill her by pouring petrol, which was witnessed by their own children. In the said circumstances, the motive and intention behind the petitioner is very clear.

8. Apart from that, the first dying declaration recorded by the police officers is clearly speak about instigation of the petitioner to cause her death through A2 & A3 by pouring petrol and set her on fire. Apart from that, the diseased immediately after she sustained injuries, disclosed the fact to P.W.1, P.W.5, P.W.6 & P.W.7 that on the date of occurrence, her husband was present and instigated A2 and A3 to pour petrol and cause death by setting fire. The said witnesses' evidence is admissible and along with the Ex.P1 dying



declaration clearly established the *prima facie* finding the petitioner instigated A2 and A3 to murder the deceased.

9. Hence the learned trial Judge, considering the above evidence rendered conviction against the petitioner under Section 302 and 120B IPC. This Court, at this stage, did not find any merit to accept the contention of the petitioner which requires the appreciation of evidence at the time of final hearing of this appeal.

10. At this stage, to the limited extent of considering the case of the petitioner, this Court concur with the view of the learner trial judge in believing the dying declaration, and the other circumstances, corroborate it with the Dying Declaration made before the police officers, namely, Ex.P1 and the same was fortified by the Hon'ble Supreme Court judgement reported in 2019 (8) SCC 739 held as follows:

"If the Court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon."

11. Applying the above principle, in this case, tutoring on the part of the father of the deceased is not accepted for the reason that the father of the deceased continuously contributed his assistance to the deceased's family from the date of marriage in the year 2001 and the petitioner did not produce any material to infer that the father of the deceased influenced the deceased to give the statement to the jurisdictional police officers.

12. The submission of the learned counsel for the petitioner that there is a chance of false implication of the petitioner in the dying declaration recorded by the police officer under Ex.P1 on the premise that there is some discrepancy between the signature of the deceased obtained in the toe impression and left thumb impression is immaterial when the doctors gave categorical opinion that she was conscious and in fit state of mind.

13.1. At this juncture, while dealing the suspension of sentence cases, it is relevant to follow the principle laid down by the Hon'ble Supreme Court in the following cases:

Preet Pal Singh v. State of U.P., reported in 2020(8) SCC 645:

"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and



suspension of sentence under Section 389 CrPC at grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the *prima facie* merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC".

13.2. *Bakshish Ram v. State of Punjab*, reported in (2009) 6 SCC 561:

"10.cases where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The seriousness and gravity of the offence must be looked into before granting the bail."

13.3.. *State of Punjab v. Deepak Mattu*, reported in (2007) 11 SCC 319:

6. An order of suspension of conviction admittedly is not to be readily granted. The High Court in its order dated 11-1-2005 passed a judgment irrespective of conviction and sentence, only on two grounds:

- (i) A long time may be taken to decide the appeal.
- (ii) There are good points to argue.

7. While passing the said order, the High Court did not assign any special reasons. Possible delay in disposal of the appeal and that there are arguable points by itself may not be sufficient to grant



suspension of a sentence. The High Court while passing the said order merely noticed some points which could be raised in the appeal. The grounds so taken do not suggest that the respondent was proceeded against by the State, mala fide or in any bad faith."

13.4. Angana v. State of Rajasthan, reported in (2009) 3 SCC 767:

14. When an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict under Section 389 of the Criminal Procedure Code.

13.5. Sidhartha Vashisht v. State (NCT of Delhi), reported in (2008) 5 SCC 230:

"29. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate court, he cannot be said to be an "innocent person" until the final decision is recorded by the superior court in his favour.

32. The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What is really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail.

33. Hence, within "measurable distance of time" the appeal is likely to be heard. Keeping in view the seriousness of offence, the manner in which the crime was said to have been committed and the gravity of offence, we are of the view that no case has been made out by the applicant appellant for suspension of sentence and grant of bail."

14. Applying the above principle, this Court has not find any merits in this suspension of sentence petition for the above stated

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) N



22

reasons. Hence, this petition is liable to be dismissed and accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
28/04/2023

WEB COPY

/ TRUE COPY /

/05/2023

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

PJL

To

The Sessions Judge,
Mahalir Neethimandram, Madurai.

ORDER
IN
CRL MP (MD) No.13879 of 2022
in
CRL A (MD) No.449 of 2022
Date :28/04/2023

ED/VR/SAR-4 (04/05/2023) 7P 2C