



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

Tuesday, the Fourteenth day of February Two Thousand and
Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P. (MD) No.16205 of 2022

in

CRL.A. (MD) No.878 of 2022

MOHAN BOVAS

... PETITIONERS/APPELLANTS

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
KOTTAR POLICE STATION,
KANYAKUMARI DISTRICT
(CRIME NO. 53 OF 2015)

... 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 by learned Additional District Judge (FTC), Nagercoil, Kanniyakumari in S.C.No. 170 of 2015, Dated. 05.07.2022 and enlarge the petitioner on bail pending disposal of the Crl.A.

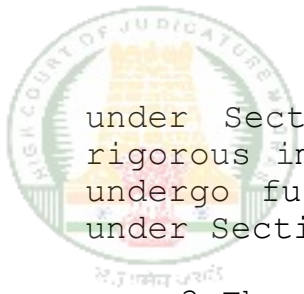
PRAYER IN CRL.A. (MD) No.878 of 2022:

To call for the records in S.C.No.170 of 2015 relating to the judgment dated 05.07.2022 passed by the learned Additional District Judge(FTC), Nagercoil and allow this appeal by setting aside conviction and sentence passed against the appellant/accused under the judgment passed by the learned Additional District Judge(FTC), Nagercoil dated 05.07.2022.

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.MARIAPPAN R, Advocate for the petitioner and of M/S.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Additional District Judge (FTC), Nagercoil, dated 05.07.2022, in S.C.No.170 of 2015 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

<https://www.mhc.tn.gov.in/> The learned counsel for the petitioner submitted that the petitioner, who is the sole accused in this case, has been found guilty and convicted by the learned District Judge, for the offence



under Section 304(ii) IPC and sentenced him to undergo rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo further period of 6 months simple imprisonment. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

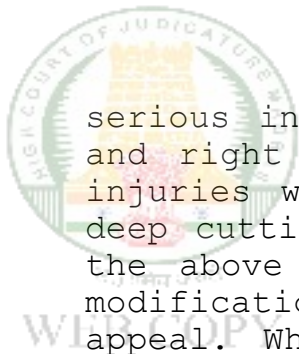
On 21.01.2015 at about 10.15 in the night, the complainant Vinoth and the deceased Benjamin, Suresh Babu, went to the house of the accused for taking some tools. At that time, they found the accused picking up quarrel with his mother and sister. When the accused tried to assault his mother, the complainant and the deceased sought to intervene and prevent the accused from assaulting his mother. Over which, the accused got angry, abused the deceased in filthy language, took up a knife and caused severe injury on the left rib region causing death. On the basis of the above said occurrence, the case was registered and final report was also filed before the trial court after completing the investigation process. Before the trial Court, on the side of the prosecution 17 witnesses have been examined, 22 documents were marked. Apart from that 6 material objects. On the side of the accused none was examined and no document was marked.

4.At the conclusion of the trial, the trial Court came to the finding that the charge under Section 304(ii) IPC that was framed against the accused person was proved beyond all reasonable doubts. On that basis, the accused was found guilty and convicted and sentenced above. In respect of other offences, he was acquitted. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.The learned counsel for the petitioner submitted that absolutely, there was no motive between this petitioner and the deceased. Even as per the case of the prosecution, out of the angry only the above said assault said to have been taken place. It was also submitted that the place of occurrence is 15 Kilometers away from the place of residence of the deceased. PW1 actually did not accompany the deceased. The injuries caused are also doubtful nature and no recovery was also made with regard to the weapons alleged to have been used. There is also some contradictory statements made by PW1 and PW14 about the occurrence. One Rajan, who admitted the deceased in the hospital was not examined as a witness.

6.Per contra, the learned Additional Public Prosecutor would submit that the injuries suffered by the deceased has been caused by this petitioner and even though there is no motive, considering the recent judgment, no interference is called for.

7.Perusal of records shows that absolutely there was no motive between this petitioner and the deceased. The deceased sought to intervene when this petitioner picked up quarrel with his own mother. Even though there was no motive and the above said assault has been made out of the anger in sudden provocation, there were two



serious injuries caused by this petitioner on the left rib and right stomach region. Except injury Nos.1 and 2, all other injuries were simple in nature. But injury Nos.1 and 2 were very deep cutting of the inner parts, so this was the force, by which, the above said assault has been made. Whether it is a case for modification of the sentence is the only point to be decided in the appeal. When this point was put to the learned counsel for the petitioner as to whether he is ready to argue the main appeal itself, he would submit that he is insisting for the suspension of sentence.

8. But considering the nature of injury, I am of the considered view that this is not the fittest case to suspend the sentence. The petitioner can argue the main appeal itself.

9. Accordingly, this criminal miscellaneous petition stands **dismissed**.

sd/-
14/02/2023

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/02/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TM

TO

1. THE ADDITIONAL DISTRICT JUDGE (FTC), NAGERCOIL

2. THE INSPECTOR OF POLICE
KOTTAR POLICE STATION,
KANYAKUMARI DISTRICT

3. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

ORDER
IN
CRL.M.P. (MD) No.16205 of 2022
in
CRL.A. (MD) No.878 of 2022
Date : 14/02/2023

RK/VS/SAR-1 (21/02/2023) 3P/5C