



CRL MP(MD) No.837 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Monday, the Fourth day of September Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL MP(MD) No.837 of 2023
IN
CRL A(MD) No.62 of 2023

1 SEENIVASAN
2 ALLIRANI

... PETITIONERS/ APPELLANTS/ ACCUSED 1 & 2

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
PATTUKOTTAI SUBDIVISION,
PERAVOORANI POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.229 OF 2017.

... RESPONDENT/RESPONDENT/COMPLAINANT

2 CHINNAIYAH

... 2nd RESPONDENT

(R2 IS SUO-MOTU IMPLIEADED AS PER
ORDER OF THE COURT DT. 17/04/2023 IN
CRL.A(MD).62 OF 2023)

Criminal Miscellaneous 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 Petitioners in SSC.No.68 of 2018 dt.26.7.2022 passed by the Learned I-Additional District and Sessions Judge(PCR), Thanjavur and enlarge them on bail pending disposal of the above Appeal.

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



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PRAYER IN CRL.A(MD).62/2023:

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Pleased to call for the records in S.S.C.No.68 of 2018 dated 26.07.2022 passed by the Learned I Additional District and Sessions Judge (PCR), Tanjavur and to set aside the same.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.KARUPPASAMY PANDIYAN G, Advocate for the petitioner and of Mr.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the 1st Respondent and Mr.K.PRABHU, Legal Aid Counsel/ Advocate for the 2nd Respondent (Appointed by the Hon'ble Court) , the court made the following order:-

(Order of the Court was made by M.NIRMAL KUMAR, J.)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners, by judgment dated 26.07.2022, passed in S.S.C.No.68 of 2018, on the file of the learned Additional District and Sessions Judge (PCR), Thanjavur, and to enlarge the petitioners/ A1 and A2 on bail pending disposal of the above appeal.

2.The petitioners are Accused Nos.1 and 2 in S.S.C.No.68 of 2018 before the learned Additional District and Sessions Judge (PCR), Thanjavur, and vide judgment dated 26.07.2022, they were convicted and sentenced as under:-



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Conviction under Section	Sentence	Fine amount
u/s.148 I.P.C. r/w. Section 3(2)(va) of the SC/ST (PoA) Act	To undergo two years rigorous imprisonment	To pay a fine of Rs.5,000/- each, in default, to undergo three months rigorous imprisonment
302 I.P.C.	To undergo life imprisonment	To pay a fine of Rs.10,000/- each, in default, to undergo one year rigorous imprisonment

Challenging the aforesaid conviction and sentence, the petitioners filed CrI.A.(MD) No.62 of 2023 along with the instant Criminal Miscellaneous Petition, seeking suspension of sentence and bail.

3.The contention of the learned counsel for the petitioners is that, in this case, the origin of the complaint (Ex.P.1) is highly doubtful. The Trial Court convicted the accused on the premise that P.W.1 and P.W.2, who are father and mother of the deceased, as eyewitnesses, had seen all the accused attacking the deceased with wooden reeper, stick and iron rod. From the complaint (Ex.P.1), it is seen that P.W.1, after receiving a phone call, had reached the scene of occurrence after the assault and hence, could not have witnessed the occurrence. Further, on this score alone, this



Court had granted bail to A3 to A5. The overt acts against the petitioners are similar to that of the other accused, who had been granted bail.

3.1. The learned counsel for the petitioners further submitted that the evidence of P.W.1 and P.W.2 are with exaggeration, improvement and contradictions, which have been admitted by P.W.15 Investigating Officer. In view of the same, relying upon the evidence of P.W.1 and P.W.2, convicting the petitioners is improper and hence, he prayed for suspension of sentence.

4. The learned Legal Aid Counsel for the second respondent submitted that in this case, the Trial Court in the judgment at Paragraphs 30 and 31, had observed that there are many defects in the investigation on the case in hand and relying upon the judgment of the Hon'ble Apex Court in the case of Amar Singh vs. Balwinder Singh [2003 Cri.L.J. 1282 (SC)] and Allarakha K.Mansuri vs. State of Gujarat [2002 Cri.L.J.1489 (SC)], held that defective investigation by itself cannot be a ground for acquittal of the accused. He further submitted that, apart from P.W.1 and P.W.2, P.W.3 to P.W.5 who are the Villagers, had followed P.W.1 and P.W.2 and their evidence have not been considered by the Trial Court. He further submitted that P.W.2 had clearly stated that when she reached the scene of occurrence, she found her son tied and thrown in a bush. When she attempted to retrieve her son, A4 had obstructed her and pulled her saree. She had identified all the five accused present in



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the scene of occurrence with stick, wooden reeper and rod. P.W.3 to P.W.5 also confirms the same. As regards the discrepancy in complaint (Ex.P.1), it is to be taken to the limited purpose of stating that it has been received only to set the ball in motion by registering the F.I.R. In this case, admittedly, P.W.1 received the information from one Ramesh. Strangely, the said Ramesh was not examined in this case. But, information discloses the fact that the deceased Boominathan was tied and thrown into a bush and thereafter, he was found with serious injuries. From the evidence of P.W.12 Postmortem Doctor, it is seen that there were 7 to 8 lacerated injuries. The Postmortem Doctor confirmed that the said injuries were possible by using M.O.1 to M.O.3. Further, the deceased Boominathan is a Village Menial, who had resisted and complained about the accused involved in illegal sand theft case. For this reason, the deceased had been done away. He further submitted that though in this case, P.W.8 and P.W.9 Village Administrative Officer and Tahsildar have been examined only for the purpose of drawing of Mahazar and for issuance of Community Certificate of the deceased, the Investigating Officer's evidence is also not satisfactory. But, this will not enure to the benefit of the accused and a reappraisal has to be done and therefore, he strongly objected to the grant of bail.

5. The learned Additional Public Prosecutor submitted that in this case, there have been two motives projected. One is that, the deceased had an illicit relationship



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with A2, which was objected by the other accused and secondly, the deceased had resisted and complained about the illicit sand mining by the accused. The death had taken place in front of A2's residence and A1 and A2 are brother and sister. He further submitted that the injuries on the body was confirmed by the Postmortem Doctor, which strengthens the prosecution case. There may be some laches, but that will not enure to the benefit of the accused. In this case, only after calling for the records and analysing the same in depth, the omission and contradictions can be confirmed. The judgment is of recent origin and hence, he strongly opposed to grant bail.

6. Considering the above said submissions and on perusal of the materials, this Court finds that though there are very many contradictions, but that will not automatically enure to the benefit of the accused. From the lower Court judgment, it is seen that the lower Court proceeds on the ground that P.W.1 and P.W.2 are eyewitnesses, which is not so. Further, there is no discussion about the evidence of P.W.3 to P.W.5, who had followed P.W.1 and P.W.2. The accused had not given any explanation for the deceased was found, tied with injuries in front of A2's residence. All the accused are closely related. There are arguable points involved in the criminal appeal and the appeal is not likely to be taken for final hearing in the near future. The points raised are to be considered only at the time of final hearing. Be that as it



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may, in view of the fact that this Court already suspended the sentence with regard to

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A3 to A5, who were similarly placed, this Court is inclined to grant bail.

7. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioners on the following conditions:-

- (i) The petitioners shall execute a bond for a sum of Rs.10,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned I Additional District and Sessions Judge (PCR), Thanjavur.
- (ii) The petitioners shall appear before the Trial Court on the first working day of every English calendar month at 10.30 a.m., until the disposal of the appeal and if they are not able to appear before the Trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of their absence, as directed by the Trial Court.

sd/-
04/09/2023

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05/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

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- 1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE (PCR), THANJAVUR.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE,
PATTUKOTTAI SUBDIVISION,
PERAVURANI POLICE STATION, THANJAVUR DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 4 THE OFFICER INCHARGE,
SPECIAL PRISON FOR WOMEN, TRICHY.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-13185[I] dated
04/09/2023)

ORDER IN
CRL MP(MD) No.837 of 2023 IN
CRL A(MD) No.62 of 2023
Date :04/09/2023

SA/SAR. /05.09.2023/8P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.