

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

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THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

Crl.M.P.No.5122 of 2021

in

Crl.A.No.181 of 2021

Muttai Ramesh @ Ramesh

.. Petitioner/A2

Vs.

State through its
Inspector of Police,
R8 Vadapalani Police Station.
Chennai.

(Crime No.1843 of 2011)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C.
Read with Section 439 Cr.P.C., to suspend the sentence imposed on the
petitioner by judgment and order dated 03.07.2019 passed in S.C.No.457 of
2012 on the file of the learned VI Additional Sessions Judge, Chennai and to
enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.S.Panneer Selvam

For Respondent : Mr.R.Muniyapparaj
Government Advocate (Crl.Side)

ORDER

(Order of the Court was made by R.PONGIAPPAN, J.)

This criminal miscellaneous petition has been preferred by Accused No.2, seeking to suspend the sentence imposed on him, by judgment and order dated 03.07.2019 passed in S.C.No.457 of 2012 on the file of the learned VI Additional Sessions Judge, Chennai and to enlarge him on bail pending disposal of the appeal.

2. In the above referred Sessions Case, the petitioner/Accused No.2, was convicted under Section 302 and 302 read with 109 of IPC and sentenced to undergo life imprisonment.

3. Challenging the above conviction and sentence, the petitioner has filed Crl.A.No.181 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Paneer Selvam, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side) appearing for the respondent/State.

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5. The case of the petitioner is that the deceased Vijikuttan was working along with one Melvin Joseph. As Melvin Joseph asked Vijikuttan for a sum of Rs.30,000/- as loan, he borrowed the said amount from his friend Raja and handed over the same to the deceased. As the said deceased Vijikuttan did not repay the loan amount borrowed even after repeated demands, the said Raja informed the matter to the 1st accused, who is none other than his brother-in-law. The 1st accused along with the petitioner and the 3rd accused went to the house of Vijikuttan and demanded the money and also threatened to do away with his life. In pursuance of the above, on 16.12.2011, at about 22.00 hours, when Vijikuttan was in his house, the 1st accused called him over phone. When Vijikuttan came out of the house, under the street light at Alagiri Nagar 4th Street, the Accused Nos.1 to 3 picked up quarrel with Vijikuttan asking the money lent by his brother-in-law Raja. At the same time, at about 22.30 hours, the petitioner and Accused No.3, caught hold of Vijikuttan's hands and thereafter, the 1st accused stabbed with knife on Vijikuttan's chest, stomach, face and neck repeatedly, as a sequel to which, the said Vijikuttan had died. Thereby, the Accused Nos.1 to 3 are said to have committed the offence punishable under Section 302 read with Section 34 IPC. The trial Court, by placing reliance upon the evidence of PW1 to PW17 coupled with the recovery, rendered conviction.

6. Mr.S.Panneer Selvam, learned counsel for the petitioner submitted that by order dated 23.12.2020, this Court had granted bail to Accused Nos.1 and 3. According to him, the scribe who helped PW1 to write the complaint, has not been examined. She (the scribe) is also stated to have told PW2 that somebody has committed the offence. PW2 has also stated that he was informed over phone that the deceased was done away with, by some persons. This was the statement given by PW2 to him. PW6, who is the other eye witness could not have witnessed the occurrence. Therefore, in view of the above, there is a serious doubt over the very complaint at the instance of PW1. As against Accused No.2/petitioner herein, even as per the case of the prosecution, he only caught hold of the deceased. He was not having any motive to kill the deceased.

7. Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side), submitted that the witnesses, examined as eye witnesses, cannot be stated as interested witnesses merely because there were minor contradictions in the evidence of PW1 to PW3 and it cannot be said that the entire occurrence is a false one.

8. From the above submissions, we do find that substantial issues are involved both on facts and law. The evidentiary value of PWs.1, 2 and 6 are to be considered, to come to a conclusion as to whether the prosecution has proved its case beyond reasonable doubt. The very case of the prosecution is that the deceased, after receiving money, did not repay after pledging jewels. The overt act as against Accused No.2/petitioner herein, is that only he caught hold of the deceased. More than that, the petitioner has been under incarceration from 08.06.2016 onwards. Thus, considering the above, we are inclined to suspend the sentence.

9. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

- (a) Considering the COVID-19 pandemic and lockdown restrictions, initially, the petitioner shall execute his own bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) before the Superintendent of the Central Prison, Puzhal, Chennai, in which the petitioner is confined and on such execution of the bond, the petitioner shall be released from prison;

(b) After the lockdown restrictions are lifted and normalcy is restored, the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned VI Additional Sessions Judge, Chennai, failing which, the suspension of sentence and bail granted by this Court shall stand automatically dismissed. The bond shall be executed within a reasonable period of one month from the date the lockdown restrictions are lifted.

(c) If for any reason, the petitioner is not able to execute the bond within the specified time, the petitioner shall approach this Court and file a petition seeking extension of time for the same.

(d) While executing the bond, the sureties shall furnish proof of identity and the sureties shall affix their photographs and left thumb impression in the surety bond and the trial Court shall obtain a copy of their Aadhar card or Voter ID or Driving license or Bank pass Book to ensure their identity.

(e) After the execution of the bond before the learned VI Additional Sessions Judge, Chennai, the petitioner shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every month at 10.30a.m. until the disposal of the appeal and if he is not able to

appear before the trial Court on any day, he 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 his absence, as directed by the trial Court.

(P.N.P.,J.) (R.P.A.,J.)
14.06.2021

Note to office:

Issue order copy today.

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To

1. The VI Additional Sessions Judge,
Chennai
2. The Superintendent of Prison,
Central Prison, Puzhal.
3. The Inspector of Police,
R8 Vadapalani Police Station, Chennai.
4. The Public Prosecutor,
Madras High Court, Chennai – 600 104.

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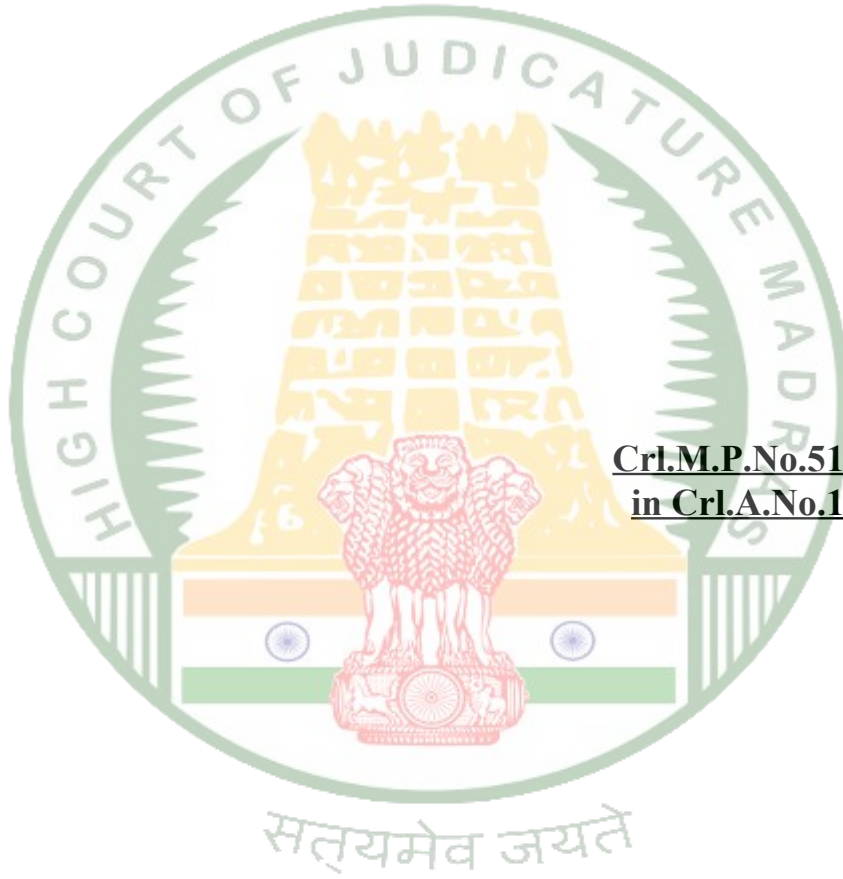
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