



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Tenth day of December Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION Nos.9239, 9251, 9343 & 9719 of 2021

in

Crl.A.Nos.421, 424, 423 & 439 of 2021

SELVAM

[PETITIONER/APELLANT
IN CRL.MP.NO.9239/2021
IN CRL.A.NO.421/2021]

AJEETH

[PETITIONER/APELLANT
IN CRL.MP.NO.9251/2021
IN CRL.A.NO.424/2021]

KUMARAVEL

[PETITIONER/APELLANT
IN CRL.MP.NO.9343/2021
IN CRL.A.NO.423/2021]

KUMAR

[PETITIONER/APELLANT
IN CRL.MP.NO.9719/2021
IN CRL.A.NO.439/2021]

Vs

THE STATE OF TAMILNADU,
THE INSPECTOR OF POLICE,
VILLUPURAM TALUK POLICE STATION,
VILLUPURAM.
CRIME NO. 729/2016

[RESPONDENT IN ALL THE PETITIONS]



Petitions praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) suspend the sentence passed by the Learned Principal Sessions Judge, Villupuram in S.C.No.123 of 2017 dated 11/08/2021 and enlarge the petitioner on bail pending the disposal of the above CRL.A.Nos.421, 424, 423 of 2021. [IN CRL.MP.Nos.9239, 9251, 9343/2021]

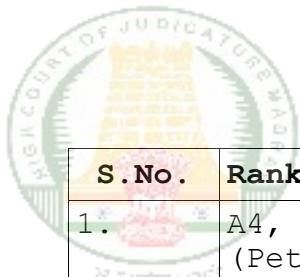
(ii) suspend the conviction of Sentence of Imprisonment for Life sentenced by the Learned Principal Sessions Judge, Villupuram vide order dated 11.08.2021 in S.C.No.123 of 2017 and enlarge the petitioner on Bail.[IN CRL.MP.NO.9719/2021]

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.V.PERARASU, Advocate for the petitioner [IN CRL.MP.NO.9239/2021 IN CRL.A.NO.421/2021] and of M/S.M.DEVARAJ, Advocate for the petitioner [IN CRL.MP.NO.9251/2021 IN CRL.A.NO.424/2021] and of M/S.R.NARAYANAN, Advocate for the petitioner [IN CRL.MP.NO.9343/2021 IN CRL.A.NO.423/2021] and of M/S.R.SREEDHAR, Advocate for the petitioner [IN CRL.MP.NO.9719/2021 IN CRL.A.NO.439/2021] and of M/S.R.MUNIYAPPARAJ, Additional Public Prosecutor on behalf of the Respondents [IN ALL THE PETITIONS] the court made the following order:-

[Common Order of the Court was made by R.HEMALATHA, J.]

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 11.08.2021 passed in S.C.No.123 of 2017 on the file of the Principal Sessions Judge, Villupuram, and to enlarge the petitioners on bail pending disposal of the appeal.

2.The petitioners are the accused 3 to 6 in S.C.No.123 of 2017 before the Principal Sessions Court, Villupuram, and were convicted and sentenced as follows:



S.No.	Rank of the accused	Conviction	Sentence
1.	A4, A6, A5 & A3 (Petitioners in Crl.M.P.Nos.9239, 9251, 9343 & 9719 of 2021 respectively)	U/s. 120 (B) of IPC U/s.302 r/w. 120 (B) of IPC	Imprisonment for life each and to pay a fine of Rs.50,000/- each in default, to undergo simple imprisonment for 3½ years each. Imprisonment for life each and to pay a fine of Rs.50,000/- each in default, to undergo simple imprisonment for 3½ years each.

The Learned Sessions Judge, further, directed that the sentence shall run concurrently. Challenging the same, the petitioners have filed Crl.A.Nos.421, 424, 423 & 439 of 2021 with the present petitions for suspension of sentence and bail.

3.Heard Mr.V.Perarasu, Mr.M.Devaraj, Mr.R.Narayanan and Mr.R.Sreedhar learned counsels for the petitioners and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

4.The case of the prosecution is that the present petitioners along with the other accused, due to previous enmity over a land dispute, conspired with each other to commit murder of a person belonging to the family of Arumugham (P.W.2) and in furtherance of such criminal conspiracy attacked the deceased Ayyanar and Anandh on 07.10.2016 at about 07.45 P.M. While the accused 1, 3 to 6 caught hold of the said Ayyanar, accused 2 stabbed him with a knife, as a result of which, Ayyanar died. They also attacked P.W.1 to P.W.5 causing injuries to them.

5.The trial Court acquitted the Accused 7 to 15 but convicted accused 1, 3 to 6 for the offences under Sections 120 (B) and 302 r/w.120(B) of IPC and accused 2 for the offences under Sections 120 (B) and 302 IPC and sentenced them as stated above.



6.The learned counsels for the petitioners contended that

a)there is no material / evidence to prove the criminal conspiracy under Section 120 (B) against the present petitioners.

b)the Investigation Officer had clearly deposed that his investigation did not reveal any previous enmity between the Accused 1 to 15 on one side and the injured witness and the deceased on the other side and therefore, motive for committing murder is not established by the prosecution.

c)the FIR was lodged with a delay of three hours, even though it is claimed by the Investigation Officer that some police personnel were deployed at the hospital at about 08.30 P.M. on the date of occurrence to disperse the mob in the hospital in order to avoid law and order problem.

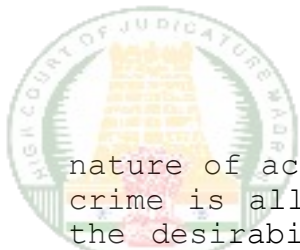
d)there are discrepancies and contradictions in the evidence of prosecution witnesses.

7. Per contra, the learned Additional Public Prosecutor refuted all the submissions made by the learned counsel for the petitioners.

8.At the outset, it may observed that all the above contentions of the learned counsels for the petitioners can be seen only during the final hearing of the case and not in the present bail petitions. Similarly, the discrepancies and the contradictions in the evidence of various witnesses that were pointed out by the learned counsel for the petitioners cannot be considered in these petitions. This is a case of preplanned murder and the injured eyewitnesses (P.W.2 to P.W.5) also have narrated the manner in which Ayyanar was done to death by the present petitioners.

9.At this juncture, it is pertinent to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), has considered Kashmira Singh vs. State of Punjab and has held as follows:

"30..... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the



nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

10. In view of the above, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioners (A4, A6, A5 & A3) and accordingly, these criminal miscellaneous petitions stand dismissed.

-sd/-
10/12/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE
VILLUPURAM.

2 THE JUDICIAL MAGISTRATE,
NO.I, VILLUPURAM.

3 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM DISTRICT. [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE .

5 THE INSPECTOR OF POLICE,
VILLUPURAM TALUK POLICE STATION,
VILLUPURAM .



6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

WEB COPY

C.C. to M/S.V.PERARASU Advocate on payment of necessary charges

Order

in

CRL MP.Nos.9239, 9251, 9343 & 9719 of 2021
in

CRL A.Nos.421, 424, 423 & 439 of 2021

Date :10/12/2021

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RW 13/12/2021