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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Cr1.M.P.No.1789 of 2022

in Cr1.A.No.435 of 2021

1.Manickam
2.Sathi @ Sathiyaraj
3.Pitchan @ Pitchai
4.Suresh @ Film Suresh
5.Indira @ Indirani
6.Raghu @ Raghuvaran .. Petitioners/AA 1 to 6

Vs.

State represented by

1.The Assistant Commissioner of Police,
South Region, Tiruppur District.

2.The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
Crime No.551/2016

.. Respondents/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioners by judgment and order dated 16.07.2021 passed in Spl.S.C.No.35 of 2016 on the file of the Principal Sessions Court, Tiruppur and to enlarge the petitioners on bail pending disposal of the appeal.

For Petitioners: Mr.M.Velmurugan
for Mr.J.M.Hassanul Bazari

For Respondents: Mr.R.Muniyapparaj
Additional Public Prosecutor



ORDER

(Made by P.N.PRAKASH, J.)

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This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 16.07.2021 passed in Spl.S.C.No.35 of 2016 on the file of the Principal Sessions Court, Tiruppur and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who were the accused in Spl.S.C.No.35 of 2016 before the Principal Sessions Court, Tiruppur, were convicted and sentenced as follows on 16.07.2021:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Manickam (A1) Sathi @ Sathiyaraj (A2)	Section 148 IPC, each	One year rigorous imprisonment, each.
Pitchan @ Pitchai (A3) Suresh @ Film Suresh (A4)	Section 449 IPC, each	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one month simple imprisonment, each.
Indira @ Indirani (A5) Raghu @ Raghuvaran (A6)	Section 302 IPC, each	Life imprisonment and fine of Rs.1,000/-, in default to undergo one month simple imprisonment, each.
The aforesaid sentences were ordered to run concurrently.		

3. Challenging the above conviction and sentences, the petitioners have filed CrI.A.No.435 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.M.Velmurugan, learned counsel representing Mr.J.M.Hassanul Bazari, learned counsel on record for the petitioners and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. This is the second petition seeking suspension of sentence and bail and the earlier petition in CrI.M.P.No.9632 of 2021 in CrI.A.No.435 of 2021 was dismissed as withdrawn on 23.09.2021.



6. It is the case of the prosecution that the accused are caste Hindus and the deceased Murugesan was a Dalit; the wife of Manickam (A1) was having illicit intimacy with Murugesan, angered at which, it is alleged that all the accused, armed with deadly weapons, barged into the house of Murugesan on 29.06.2016 around 6.30 p.m. and fatally attacked him.

7. We find that the prosecution case rests on the direct evidences of Sivakami (PW1) and Priyadharshini (PW2), close relatives of Murugesan, who had witnessed the attack.

8. Under such circumstances, we are not inclined to grant suspension of sentence and bail to Manickam (A1), Sathi @ Sathiyaraj (A2), Pitchan @ Pitchai (A3), Suresh @ Film Suresh (A4) and Raghu @ Raghuvaran (A6).

9. At this juncture, pertinent it is to point out that the Supreme Court, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)¹, has considered Kashmira Singh vs. State of Punjab² 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 reasoning and taking into consideration the evidence on record, this is not a fit case to grant suspension of sentence and bail to Manickam (A1), Sathi @ Sathiyaraj (A2), Pitchan @ Pitchai (A3), Suresh @ Film Suresh (A4) and Raghu @ Raghuvaran (A6) and accordingly, this criminal miscellaneous petition stands dismissed *qua* Manickam (A1), Sathi @ Sathiyaraj (A2), Pitchan @ Pitchai (A3), Suresh @ Film Suresh (A4) and Raghu @ Raghuvaran (A6).

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



11. However, we find that the evidence as against Indira @ Indirani (A5), fifth petitioner herein, appears little frail.

12. Accordingly, this criminal miscellaneous petition stands allowed *qua* Indira @ Indirani (A5), fifth petitioner and the sentence of imprisonment is suspended and bail is granted to the fifth petitioner on the following conditions:

- (i) The fifth petitioner shall execute a bond for a sum of Rs.25,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Principal Sessions Court, Tiruppur;
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their mobile number, Aadhar card or Bank pass Book to ensure their identity; and
- (iii) The fifth petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if she is not able to appear before the trial Court on any day, she 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 her absence, as directed by the trial Court.

-sd/-

18/04/2022

This order, on being produced, be punctually observed and carried into execution by all concerned
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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE,
TIRUPPUR.

2 THE ASSISTANT COMMISSIONER OF POLICE,
SOUTH REGION, TIRUPPUR DISTRICT.



3 THE INSPECTOR OF POLICE
TIRUPPUR SOUTH POLICE STATION,
TIRUPUR DISTRICT.

4 THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN,
COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S J.M.HASSANUL BAZARI Advocate on payment of
necessary charges SR.No.5856

Order
in
CRL MP.1789/2022
in
CRL.A.435/2021
Date :18/04/2022

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CSK 20/04/2022