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IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

RESERVED ON : 13.04.2022

PRONOUNCED ON : 26.04.2022

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice A.A.NAKKIRAN

CRIMINAL MISCELLANEOUS PETITION No.2968 of 2022

IN CRL.A.NO.97 of 2020

THIAGARAJAN

[PETITIONER/APPELLANT ]

Vs

STATE REP BY  
THE INSPECTOR OF POLICE,  
NAZARATHPET POLICE STATION,  
CHENNAI.  
CRIME NO.588/2014.

[RESPONDENT/COMPLAINANT]

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

(i) To suspend the sentence imposed in S.C.No.27 of 2015 dated 31.01.2020 passed by the Learned II Additional District and Sessions Judge, Thiruvallur @ Poonamallee and enlarge the petitioner on bail pending disposal of the above said Crl.A.No.97 of 2020.

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



## ORDER

**P.N.PRAKASH, J.**

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 31.01.2020 passed in S.C.No.27 of 2015 on the file of the II Additional District and Sessions Court, Tiruvallur @ Poonamallee and to enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who was the second accused in S.C.No.27 of 2015 before the II Additional District and Sessions Court, Thiruvallur @ Poonamallee, was convicted and sentenced as follows on 31.01.2020:

| <b><i>Provision under which convicted</i></b>             | <b><i>Sentence</i></b>                                                                                        |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Section 302 r/w 34 IPC                                    | Rigorous imprisonment for life and fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment. |
| Section 120-B r/w 34 IPC                                  | Rigorous imprisonment for life and fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment. |
| The aforesaid sentences were ordered to run concurrently. |                                                                                                               |

3. Challenging the aforesaid conviction and sentences, the petitioner (A2) has filed CrI.A.No.97 of 2020 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Parthasarathy, learned counsel for the petitioner (A2) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. This is the third petition seeking suspension of sentence and bail and the earlier two petitions in CrI.M.P.No.1906 of 2020 and CrI.M.P.No.4739 of 2021 filed by the petitioner (A2) were dismissed as withdrawn on 16.10.2020 and 14.06.2021, respectively.

6. It is the case of the prosecution that the deceased Devaraj and Mani were the father and brother of the petitioner (A2), respectively; Thosaikumar (A1) is the driver of the petitioner (A2); Saravana Kumar (A3) is the friend of Thosaikumar (A1); in order to meet out the loss incurred in his business, the petitioner (A2) decided to sell his family property; since Devaraj and Mani were not agreeable for the same, the petitioner (A2) is said to have conspired with Thosaikumar (A1) and Saravana Kumar (A3) and killed his own father and brother.



7. The learned counsel for the petitioner (A2) submitted that there is absolutely no shred of evidence to sustain the conviction of the petitioner (A2) except the extrajudicial confession (Ex-P3) of Thosaikumar (A1), which was given to Maheshkumar (PW4), Village Administrative Officer (VAO). He further submitted that the extrajudicial confession (Ex-P3) of Thosaikumar (A1) was accepted by the trial Court only with regard to the murder of Mani and the same was disbelieved with regard to the murder of Devaraj. It is his further submission that except the extrajudicial confession (Ex-P3) of Thosaikumar (A1), there is no other evidence to connect the petitioner with the alleged occurrence.

8. *Per contra*, the learned Additional Public Prosecutor took this Court through the findings of the trial Court and submitted that the manner in which Thosaikumar (A1), on the instructions of the petitioner (A2), had committed the murder of Mani and disposed of the body in a preplanned manner, is gruesome. He further submitted that the petitioner (A2) will not be entitled to the relief of suspension of sentence and bail, as he committed a premeditated murder of his brother Mani by hiring Thosaikumar (A1).

9. This Court gave its anxious consideration to the rival submissions.

10. This Court cannot go into the evidentiary value of the extrajudicial confession (Ex-P3) of Thosaikumar (A1) at this juncture and the same can be appreciated only during the final disposal of the main appeal. Suffice to say that the findings of the trial Court cannot be said to be *per se* perverse in the facts and circumstances of the case.

11. The following finding in the judgment of the trial Court is worth extracting:

"46. In our case, the above stated the person's acted upon conspiracy is clearly made out. The place of occurrence where A1 chosen to commit murder and behaviour of Accused A1 and A2, motive previous and consequent conduct is proved by prosecution. The prosecution clearly proved that the accused A1 to A3 had hatched the conspiracy acted in concert to give effect to their plan to get Devaraj Chowdry murdered and in pursuance of the aforesaid criminal conspiracy, A3 accused facilitated commission of aforesaid crime. Hence no possibilities for the outsiders to witness the conspiracy."



12. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**<sup>1</sup>, has considered **Kashmira Singh v. State of Punjab**<sup>2</sup> and has held as follows:

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"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."

In view of the above reasoning and taking into consideration the nature of allegations against the petitioner (A2), we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this criminal miscellaneous petition stands dismissed.

-sd/-  
26/04/2022

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.

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1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



TO

1 THE II ADDITIONAL DISTRICT  
AND SESSIONS JUDGE, THIRUVALLUR,  
POONAMALLEE.

2 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,  
NAZARATHPET POLICE STATION,  
CHENNAI.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, PUZHAL, CHENNAI.

+1 C.C. to M/S.S.PARTHASARATHY Advocate on payment of necessary  
charges SR.NO.6217

Order

in  
CRL MP.2968/2022  
in  
CRL A.97/2020

Date :26/04/2022

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TA-01/06/2022