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Crl.M.P.No.5060 of 2022
in Crl.A.No.416 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM

The Honourable Mr. Justice **S.VAIDYANATHAN**
and
The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

Crl.M.P.No.5060 of 2022
in Crl.A.No.416 of 2022

G.Babu .. Petitioner/Accused

Vs.

State represented by
The Deputy Superintendent of Police,
Mailam Police Station,
Villupuram District.
(Crime No.607/2010)

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed on the petitioner by judgment dated 28.02.2022 passed in S.C.No.262 of 2016 on the file of the District Mahila Court, (Fast Track Mahila Court), Villupuram and to enlarge the petitioner on bail pending disposal of the appeal.

For petitioner : Mr.S.V.Karthikeyan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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ORDER

(Order of the Court was made by *A.D.JAGADISH CHANDIRA, J.*)

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This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 28.02.2022 passed in S.C.No.262 of 2016 on the file of the District Mahila Court, (Fast Track Mahila Court), Villupuram and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who was an accused in S.C.No.262 of 2016 before the District Mahila Court, (Fast Track Mahila Court), Villupuram, was convicted and sentenced as follows on 28.02.2022:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Babu	Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment.
	Section 498-A IPC	Two years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo one month simple imprisonment.
The aforesaid sentences were ordered to run concurrently.		

3. Challenging the above conviction and sentences, the petitioner has filed Crl.A.No.416 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. Heard Mr.S.V.Karthikeyan, learned counsel for the petitioner and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution is that the petitioner used to consume alcohol and quarrel with his deceased wife Hemalatha frequently by asking her to bring money from her natal home. On 21.12.2010, Hemalatha questioned the petitioner about his immoral behaviour, infuriated at that, the petitioner is said to have assaulted Hemalatha and caused her death.

6. The learned counsel for the petitioner would submit that though initially the police have filed charge sheet for the offences under Sections 498-A and 304-B IPC, during committal proceedings, the Sessions Judge found incriminating materials to try the petitioner for the offences under Section 302 IPC in place of 304-B IPC along with Section 498-A IPC as originally mentioned in the charge sheet and convicted and sentenced him as above. He would further submit that in the postmortem report (Ex.P3), excepting a total crush injury on the right thumb no other external injury was found on the body of the deceased. The hyoid bone was intact. Dr.Sugunarani (P.W.6), who conducted autopsy on the body of Hemalatha, has opined that the death would have caused due to haemorrhagic shock and other than that nothing



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had been stated and when such being so, burden is cast on the prosecution to prove that the petitioner was in any way connected with the cause of the death of Hemalatha and the prosecution has miserably failed to prove that the petitioner was responsible for the death of his wife. He would further submit that the couple had three children, who were also stated to be present in the house during the alleged occurrence, but, none of them has been examined by the prosecution. He would further submit that the prosecution has failed to prove the case beyond reasonable doubt and the trial Court erred in convicting the petitioner. He would further submit that the three children of the petitioner are now being maintained by the aged parents of the petitioner and thereby, he seeks for suspension of sentence.

7. The learned Additional Public Prosecutor would submit that though only a single injury was found on the body of Hemalatha and Dr.Sugunarani (P.W.6) has stated that Hemalatha would have died due to haemorrhagic shock and excess bleeding. However, the death has happened within a house and thereby, the burden is on the accused to explain the same.

8. The petitioner has raised substantial grounds in the appeal, which require detailed appraisal. Moreover, the petitioner has been in incarceration since 28.02.2022. Further, the appeal is not likely to be taken



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up in the near future. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

9. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- , with two sureties, each for a like sum to the satisfaction of the District Mahila Court, (Fast Track Mahila Court), Villupuram;
- (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 Aadhar card or Bank pass Book and mobile numbers to ensure their identity;
- (iii) The 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 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;
- (iv) The petitioner shall furnish his permanent residential address to the police and the trial Court; and
- (v) Till the disposal of the above appeal, the petitioner shall not leave Tamil Nadu without the permission of the trial Court.

(S.V.N., J.) (A.D.J.C., J.)
08.07.2022

nsd

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To

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- 1.The District Mahila Judge,
(Fast Track Mahila Court), Villupuram.
- 2.The Deputy Superintendent of Police,
Mailam Police Station,
Villupuram District.
- 3.The Superintendent of Prison,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDIRA, J.

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