



Crl.M.P.No.7749 of 2022
in Crl.A.No.349 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM

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

Crl.M.P.No.7749 of 2022
in Crl.A.No.349 of 2022

Balaji

.. Petitioner/Accused No.3

Vs.

State represented by
The Inspector of Police,
Mangalam Police Station,
Tiruppur District.
(Crime No.517 of 2012)

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389 Cr.P.C. to suspend the sentence imposed on the petitioner by judgment dated 22.02.2022 passed in S.C.No.100 of 2015 on the file of the II Additional District and Sessions Court, Tiruppur and to enlarge the petitioner on bail pending disposal of the appeal.

For petitioner : Mr.T.Shunmugarajeswaran

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



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ORDER

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This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 22.02.2022 passed in S.C.No.100 of 2015 on the file of the II Additional District and Sessions Court, Tiruppur and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who was the third accused in S.C.No.100 of 2015 before the II Additional District and Sessions Court, Tiruppur, was convicted and sentenced as follows on 22.02.2022:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Balaji (A3)	Section 302 r/w 109 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment.

3. Challenging the above conviction and sentence, the petitioner has filed Crl.A.No.349 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.T.Shunmugarajeswaran, 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 deceased Iniyavan is the husband of the aunt of Balaji (A1) and Ashok (A2). Iniyavan had illicit intimacy with the mother of Balaji (A1) and Ashok (A2). Antagonized by the same, Balaji (A1) and Ashok (A2) decided to do away with Iniyavan and thereby, they along with the petitioner brought Iniyavan to a secluded place near a lake to celebrate the birth of the child of Balaji (A1) and they drank together. Thereafter, Balaji (A1) and Ashok (A2) have assaulted Iniyavan with Aruval and the petitioner is said to have thrown chilly powder on the face of Iniyavan and thereby, caused his death.

6. After completing the investigation, the respondent/police has filed a final report against Balaji (A1) and Ashok (A2) for the offences under Section 302 IPC (for committing murder) and against the petitioner for the offence under Section 302 r/w 109 IPC (for abetting the accused).

7. The trial Court, after considering the evidence on record and hearing either side, found “guilty” and convicted and sentenced the petitioner as above.

8. The learned counsel for the petitioner would submit that the petitioner is arrayed as A3 in this case and the allegation as far the petitioner



is concerned, he is stated to have abetted the main accused in the offence by throwing chilly powder on the face of Iniyavan and Balaji (A1) and Ashok (A2) are stated to have inflicted cut injuries on Iniyavan. He would further submit that Amudha (P.W.2), in her evidence, has stated that Iniyavan has so many enemies and he has several cases pending against him. Adhiyappan (P.W.4) and Ganeshkumar (P.W.8) are said to have seen the occurrence, whereas, during examination in the Court, they have not supported the case of the prosecution and they have been treated as hostile. He would further submit that the petitioner has been roped in, since he was a friend of Balaji (A1) and Ashok (A2).

9. The learned Additional Public Prosecutor would submit that the petitioner is the friend of Balaji (A1) and Ashok (A2). Balaji (A1) and Ashok (A2) had enmity with Iniyavan since they suspected that Iniyavan was having illicit intimacy with their mother and thereby, in the guise of giving party to Iniyavan, had taken him to a secluded place near a lake along with the petitioner and murdered Iniyavan. He opposed for grant of suspension of sentence and bail to the petitioner.

8. The petitioner has raised substantial grounds in the appeal,



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incarceration since 22.02.2022. Further, the appeal is not likely to be taken 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 II Additional District and 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 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;



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- (iv) The petitioner shall furnish his mobile number, which shall not be changed till the issue comes to a logical conclusion and permanent residential address to the police and the trial Court. The petitioner is permitted to change the portability and not the mobile number; and
- (v) Till the disposal of the above appeal, the petitioner shall not leave Tamil Nadu without the permission of the trial Court. In case, permission is granted, the petitioner shall furnish the place where he is going to reside and the contact person details viz. aadhar card, mobile number, etc. that are required by the trial Court.

(S.V.N., J.) (A.D.J.C., J.)
11.07.2022

nsd



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To

- 1.The II Additional District and Sessions Judge,
Tiruppur.
- 2.The Inspector of Police,
Mangalam Police Station,
Tiruppur District.
- 3.The Superintendent of Prison,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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and
A.D.JAGADISH CHANDIRA, J.

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