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Crl.M.P.No.5117 of 2022
in Crl.A.No.560 of 2021

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P.N.PRAKASH, J.
and
RMT.TEEKAA RAMAN, J.

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

This criminal miscellaneous petition has been filed seeking a direction to suspend the sentence imposed on the petitioner by judgment and order dated 17.09.2021 passed in S.C.No.7 of 2019 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee and to enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner faced a prosecution in S.C.No.7 of 2019 on the file the Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, in which, by judgment and order dated 17.09.2021, he was convicted and sentenced as follows:



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<i>Provision under which convicted</i>	<i>Sentence</i>
Section 120-B IPC	Life imprisonment and fine of Rs.25,000/-, in default to undergo six months rigorous imprisonment.
Section 302 IPC	Life imprisonment and fine of Rs.25,000/-, in default to undergo six months rigorous imprisonment.
Section 201 IPC	Seven years rigorous imprisonment and fine of Rs.25,000/-, in default to undergo six months rigorous imprisonment.
Section 6 of the Explosive Substances Act, 1908	Seven years rigorous imprisonment and fine of Rs.25,000/-, in default to undergo six months rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the aforesaid conviction and sentences, the petitioner has filed Crl.A.No.560 of 2021 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.M.Vimal Bobby Crimson, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the first respondent/State and Mr.P.Vijendran, learned counsel for the second respondent/de facto complainant



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5. It is the case of the prosecution that there was a long-standing boundary dispute between the families of the deceased Tamilselvan and Asaithambi (A3), in connection with which, a few days prior to the date of occurrence, Poyyamozhi (A1) intervened on behalf of Asaithambi (A3), which resulted in a fracas, in which, Tamilselvan is said to have abused Poyyamozhi (A1) and had pulled his shirt; enraged by the same, the accused decided to get rid of Tamilselvan and on 25.12.2005, around 9.30 a.m., while Tamilselvan was coming out of the pond after bathing his cow, all the accused came from the house of Asaithambi (A3) and indiscriminately attached Tamilselvan and caused his death.

6. After completing the investigation, nine persons were shown as accused including Poyyamozhi (A1), Asaithambi (A3) and Selvam (A4). During trial, Poyyamozhi (A1), Asaithambi (A3) and Selvam (A4) absconded and therefore, Poyyamozhi (A1) was declared as a proclaimed offender under Section 82 Cr.P.C. and the case against him was split up. Similarly, the cases against Asaithambi (A3) and Selvam (A4) have also been split up from the mother case. The mother case in S.C.No.16 of 2017



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ended in the conviction of Elangovan (A2) and Amudharasan (A9) and acquittal of Padmavathi (A5), Kanimozhi (A6) and Kayalvizhi (A7).

7. The appeals filed by Elangovan (A2) and Amudharasan (A9) are pending before this Court and suspension of sentence and bail have not been granted to them. The wife of Tamilselvan took great efforts by filing several petition by moving this Court, pursuant to which, Poyyamozhi (A1) was secured by the police by way of Prisoner Transit (P.T.) warrant on 27.11.2019 and the trial in this case was conducted in S.C.No.7 of 2019, which has ended in his conviction and sentence on 17.09.2021.

8. The learned counsel for the petitioner submitted that the prosecution has suppressed the fact that Tamilselvan and his wife had assaulted Poyyamozhi (A1) and even according to the prosecution, the motive for murder is only against Asaithambi (A3), inasmuch as, the brother of Tamilselvan had purchased the disputed property from Asaithambi's (A3's) father and that had resulted in them having a boundary dispute, which stood unresolved for several years. He further submitted that there were



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neighbours in and around the locality, who were not examined and only the close relatives of Tamilselvan were examined.

9. *Per contra*, the learned Additional Public Prosecutor for the first responden/State and Mr.P.Vijendran, learned counsel for the second respondent/de facto complainant brought to the notice of this Court the conduct of Poyyamozhi (A1) remaining in abscondance for about more than ten years. The learned Additional Public Prosecutor submitted that there are several criminal cases against Poyyamozhi (A1) viz. Paravakottai Police Station Crime No.256 of 2021 for the offences under Sections 148, 294(b), 319 and 307 IPC, Paravakottai Police Station Crime No.34 of 2017 for the offence under Section 229 IPC and Paravakottai Police Station Crime No.135 of 1997 for the offence under Section 307 IPC, which are all pending trial.

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



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11. As regards the various points raised by the learned counsel for the petitioner attacking the trial Court judgment, we find that those aspects can be gone into only during the final disposal of the case, as they hinge upon appreciation of evidence, which cannot be done in an application for suspension of sentence and bail.

12. That apart, there is sufficient force in the submission of the learned Additional Public Prosecutor that when the appellant was in abscondance for such a long time, if he is granted bail, he may not be available at the time of final disposal of the case.

13. 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 v. State of Punjab**² 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

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



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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, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed. At the time of final hearing, this appeal may be posted along with Crl.A.Nos.759 of 2019 & 494 of 2020.

(P.N.P.,J.) (T.K.R.,J.)
20.09.2022

nsd



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nsd

To

- 1.The Sessions Judge
for Exclusive Trial of Bomb Blast Cases,
Chennai at Poonamallee.
- 2.The Inspector of Police,
Paravakottai Police Station,
Thiruvarur District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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20.09.2022