



Crl.M.P.No.5500 of 2022
in Crl.A.No.561 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2022

CORAM

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

Crl.M.P.No.5500 of 2022
in Crl.A.No.561 of 2021

Jeevananthan .. Petitioner/Accused

Vs.

1.State represented by
The Deputy Superintendent of Police,
Vazhapady Police Station,
Salem. .. Respondent/Complainant

2.Rangasamy ..Respondent/brother of the
deceased

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed on the petitioner by judgment dated 08.10.2021 passed in S.C.No.93 of 2016 on the file of the Principal Sessions Court, Salem and to enlarge the petitioner on bail pending disposal of the above appeal.

For petitioner : Mr.P.Wellington

For R1 : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

For R2 :Ms.M.Mohana



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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 08.10.2021 passed in S.C.No.93 of 2016 on the file of the Principal Sessions Court, Salem and to enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner, who was an accused in S.C.No.93 of 2016 before the Principle Sessions Court, Salem, was convicted and sentenced as follows on 08.10.2021:

<i>S.No.</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
1	Section 364 IPC	Ten years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo two years rigorous imprisonment.
2	Section 302 IPC	Life imprisonment and fine of Rs.2,000/-, in default to undergo four years rigorous imprisonment.
3	Section 201 r/w 302 IPC	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo two years rigorous imprisonment.
4	Section 3(1)(x) of the SC/ST (POA) Act	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo nine months rigorous imprisonment.
5	Section 3(2)(v) of the SC/ST (POA) Act	Life imprisonment and fine of Rs.1,000/-, in default to undergo four years rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.		



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3. Challenging the above conviction and sentences, the petitioner has filed Crl.A.No.561 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail. The earlier petition in Crl.M.P.No.11808 of 2021 seeking suspension of sentence and bail was dismissed as withdrawn *vide* order of this Court dated 24.11.2021.

4. Heard Mr.P.Wellington, learned counsel for the petitioner, Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the first respondent/State and Ms.M.Mohana, learned counsel for the second respondent/de facto complainant.

5. The case of the prosecution is that the deceased Kanmani belongs to scheduled caste community and the petitioner belongs to backward class community. It is the further case of the prosecution that Kanmani was a drunkard and he was in the habit of accusing the petitioner with obscene words in front of the grocery shop run by the petitioner and therefore, the appellant had enmity and hatred towards Kanmani. While that being so, on 07.07.2015 around 2.00 p.m., the petitioner had made Kanmani to clean the grass and bush behind his shop and on the same day, around 5.00 p.m., when Kanmani demanded Rs.200/- from the petitioner for his work, the



between them, which ended in exchange of blows on each side and so, the petitioner had developed grudge to do away with Kanmani. Thereafter, on the same day i.e. On 07.07.2015, around 5.30 p.m., the petitioner had deceitfully induced Kanmani to come with him to consume liquor and kidnapped Kanmani in a motorcycle bearing Registration No.TN 30 V 9306 and took him to the last pillar beneath Vashista Nathi bridge and committed the murder of Kanmani by hitting him with a stone and crushing his face, so that, Kanmani could not be identified and also removed the shirt worn by Kanmani and caused the evidence of commission of murder to disappear.

6. After completing the investigation, the respondent/police has filed a final report against the petitioner for the offences under Sections 364, 302, 201 r/w 302 IPC and Sections 3(1)(x) and 3(2)(v) of the SC/ST (POA) Act.

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 it is the case of circumstantial evidence and the prosecution has relied on the



evidence on Jayaraman (P.W.2) and Ganesan (P.W.3) for having seen Kanmani and the petitioner together. He would further submit that it is common knowledge that two persons, who had a fight, would not have travelled together and therefore, the version of the prosecution that Kanmani had travelled together with the petitioner on an invitation to consume liquor, cannot be believed. Moreover, Ganesan (P.W.3), in his evidence, has stated that he is not a relative of Kanmani, whereas, the same fact has been falsified by the evidence of Rangasamy (P.W.4), brother of Kanmani. Though Rangasamy (P.W.4) had deposed that there was previous enmity between the petitioner and Kanmani, nothing had been spoken to about enmity at the time of giving the complaint. He would further submit that the petitioner has raised valid grounds in the appeal and the petitioner was on bail during trial and he has been in incarceration since 08.10.2021.

9. The learned Additional Public Prosecutor would submit that the prosecution by examining thirteen witnesses and marking twenty seven exhibits and eight material objects, has proved the case beyond reasonable doubt. He would further submit that Jayaraman (P.W.2) and Ganesan (P.W.3), in their evidence, have stated that they have seen the petitioner and Kanmani travelling together in a motorcycle and thereafter, the body of Kanmani was found near the bridge. It is his further submission that the



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petitioner has also given an extrajudicial confession to Gopinath, Village Administrative Officer. He would further submit that the trial Court, after finding that the chain of circumstances to be true, has rightly convicted and sentenced the petitioner as above.

10. The learned counsel for the second respondent/de facto complainant would oppose this criminal miscellaneous petition seeking suspension of sentence and bail by stating that the prosecution has proved the case beyond any reasonable doubt.

11. Taking into consideration the facts and circumstances of the case, it is seen that this is a case, in which, a person belonging to an oppressed community had done to death by the petitioner. It is also seen that the prosecution case rests on the last seen theory and extrajudicial confession of the petitioner.

12. The petitioner has raised substantial grounds in the appeal, which require detailed appraisal. Moreover, the petitioner has been in incarceration since 08.10.2021. 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.



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13. 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 Principal Sessions Court, Salem;
- (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 every Monday at 10.30 a.m. (in case, if Monday is holiday, he shall appear on the next working day) 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 the trial Court;
- (iv) Independent of Section 317 Cr.P.C., in case of any emergency due to treatment, hospitalization, sudden death of his relatives, etc., the petitioner shall also intimate the jurisdictional police about the details of place of visit, name of the contact person with Aadhar card or any other photo



identity of that person along with reasons therefor and the number of days of absence in the locality, before leaving Tamil Nadu;

- (v) 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
- (vi) The petitioner shall stay at Erode and shall not enter into the jurisdictional limit of the respondent/police station.

(S.V.N., J.) (A.D.J.C., J.)
27.07.2022

nsd

Note: Issue copy of this order by 28.07.2022.



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To

- 1.The Principal Sessions Judge,
Salem.
2. The Deputy Superintendent of Police,
Vazhapady Police Station,
Salem.
- 3.The Superintendent of Prison,
Central Prison,
Salem.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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and
A.D.JAGADISH CHANDIRA, J.

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