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Crl.M.P.No.6392 of 2022 ...
Crl.A.No.489 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2022

PRONOUNCED ON:30.11.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.M.P.No.6392 of 2022

in

Crl.A.No.489 of 2022

Kothandapani @ Ajith

.. Petitioner/ Appellant

Vs.

State of Tamil Nadu
Represented by Inspector of Police,
Villupuram Taluk Police Station
Villupuram District
Crime No.2513 of 2020

.. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence passed by the learned Principal Sessions Judge, Villupuram in S.C.No.145 of 2021 dated 06.04.2022 and enlarge the petitioner on bail pending the disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

RMT.TEEKAA RAMAN, J.,

The sole accused, who was convicted, has preferred the above appeal in Crl.A.No.489 of 2022 and also filed this Criminal Miscellaneous Petition for suspension of sentence awarded in S.C.No.145 of 2021.

2. By a judgment dated 06.04.2022, the learned Principal Sessions Judge, Villupuram in S.C.No.145 of 2021 had laid the conviction and sentenced the petitioner as under:-

<i>Sl.No.</i>	<i>For Offence under</i>	<i>Sentence</i>
1.	Section 449 of IPC	To undergo Life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.
2.	Sectio 302 r/w 149	To undergo Life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.

The sentences are directed to run concurrently.

3. The case of the prosecution is that:

a) The deceased, the petitioner, and the witnesses had consumed alcohol on 19.12.2020 near Nannadu School. At 9.30 p.m the petitioner has requested the deceased to share alcohol which was refused by the deceased and had scolded the petitioner with filthy language and assaulted the petitioner. On account of this, the petitioner is alleged to



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have said that he is not going to leave the deceased and at 11.00 P.M, the petitioner is alleged to have taken his motor cycle and reached the deceased house with yoke, had removed the tiles from the kitchen, entered the house and had caused the death of the deceased by indiscriminately beating him on the head.

4. During the trial, prosecution examined 13 witnesses P.W.1 to P.W.13 and marked 23 documents Exs.P1 to P23 and material objects M.O.1 to M.O.12 were marked.

5. The learned counsel for the petitioner could submit that there is no eye witness and the prosecution has relied upon circumstantial evidence particularly the evidence of P.W.4 who had stated that he had seen the petitioner/accused with wooden log at 11.00 p.m and inquired as to where the deceased is and he has went in his two wheeler.

6. The other incident relied upon by the trial Court is that P.W.2 mother of the deceased could depose that the deceased had informed her that the petitioner had quarrelled with the deceased for not sharing the alcohol to him and third circumstance was that the sniffer dog was put into service and it has taken to the house of the petitioner and the prosecution has also relied upon recovery from the admissible portion of the confession statement.



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7. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

8. P.W.2 has given a finding that the deceased was highly intoxicated and alcohol about 250 milligrams was deducted on the deceased as per the viscera. The case is entirely based upon the circumstantial evidence.

9. The deceased was seen alive lastly by his mother P.W.2 around 7.00 p.m and deceased was found dead firstly by P.W.3 on 20.12.2020 about 7.30 p.m viz., the next day.

10. After going through the records, we find that there are arguable points involved in this case as to the evidence. Further considering the fact that the petitioner is in incarceration from 06.04.2022 onwards, and that the appeal is not likely to be taken up in near future, this Court is of the view that the petitioner/accused is entitled to the relief of suspension of sentence.

11. Accordingly, this **Criminal Miscellaneous Petition stands allowed** and the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate No.1, 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 Aadhaar card or Bank pass book and mobile number to ensure their identity; and
- (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, they 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.

(P.N.P.J.) (T.K.R.J.)
30.11.2022

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To

1. The Judicial Magistrate No.1, Villupuram.
2. The Public Prosecutor,
Madras High Court, Chennai – 600 104.
3. The Superintendent of Prison,
Central Prison, Cuddalore.



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P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

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