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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

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

Crl.M.P.No.7738 of 2022
in Crl.A.No.477 of 2021

Radhamani .. Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Kangayam Police Station,
Kangayam.
(Crime No.49/2016) .. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389 Cr.P.C., to suspend the sentence imposed on the petitioner by judgment dated 31.08.2021 passed in S.C.No.194 of 2016 on the file of the Additional District and Sessions Court No.III, Dharapuram and to enlarge the petitioner on bail pending disposal of the appeal.

For petitioner : Mr.R.Rajasekaran

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.*)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 31.08.2021 passed in S.C.No.194 of 2016 on the file of the Additional District and Sessions Court No.III, Dharapuram and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution in brief is that the petitioner had developed illicit intimacy with Sekar (A1) and finding that the deceased Manokaran, husband of the petitioner, was a hindrance to the relationship, the petitioner is said to have conspired with Sekar (A1), who is the paramour of the petitioner, on 18.01.2016 and committed the murder of Manokaran on 19.01.2016 between 21.00 to 22.00 hours.

3. After completing the investigation, the respondent/police had filed a final report against the petitioner and Sekar (A1) for the offences under Sections 120-B and 302 IPC.

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4. On the side of the prosecution, fifteen witnesses (P.Ws.1 to 15) were examined and twenty one exhibits (Exs.P1 to 21) and seven materials objects (M.Os.1 to 7) were marked. On the side the defence, no witness was examined, however, one exhibit (Ex.D1) was marked.

5. The petitioner, who was the second accused in S.C.No.194 of 2016 before the Additional District and Sessions Court No.III, Dharapuram, was convicted and sentenced as follows on 31.08.2021:

Accused	***Provision under which convicted***	***Sentence***
Radhamani (A2)	Section 120-B r/w 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment.

6. Challenging the above conviction and sentence, the petitioner has filed Crl.A.No.477 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

7. Heard Mr.R.Rajasekaran, learned counsel for the petitioner and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

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8. The learned counsel for the petitioner would submit that the prosecution case stands on circumstantial evidence and the extrajudicial confession alleged to have been given by the petitioner, based on which, a mobile phone (M.O.2) was recovered from the petitioner. He would further submit that the case of the prosecution is highly doubtful, for, though an allegation was made that the petitioner and Sekar (A1) were having telephonic conversation between 21.00 to 22.00 hours on 19.01.2016, no materials have been produced, much less, call details were not produced to show that the accused were in contact with each other at the relevant point of time. Further, he would submit that the extrajudicial confession is alleged to have been recorded when the petitioner was in custody. The recovery is also doubtful since there are two recovery mahazars in respect of recovery of mobile phone (M.O.2) from the petitioner, thereby, making the prosecution case highly doubtful. He would further submit that there are valid grounds available in the appeal and the petitioner was on bail during trial.

9. *Per contra*, the learned Additional Public Prosecutor vehemently opposed and stated that the petitioner had developed illicit intimacy with Sekar (A1) and as they found Manoharan, husband of the petitioner, was an hindrance to their affair, they had conspired on 18.01.2016 to do away with him and on 19.01.2016, they had committed the murder of Manoharan

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between 21.00 to 22.00 hours. He would further submit that though it is the case of circumstantial evidence, the prosecution had proved this case beyond any reasonable doubt and thereby, the trial Court has found the accused guilty.

10. The petitioner has raised substantial grounds in the appeal, which require detailed appraisal. Moreover, the petitioner has been in incarceration since 31.08.2021. 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.

11. 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 Additional District and Sessions Court No.III, Dharapuram;

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(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; 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 she is not able to appear before the trial Court on any day, she 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 her absence, as directed by the trial Court.

(S.V.N., J.) (A.D.J.C., J.)
05.07.2022

nsd

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To

1.The Additional District and Sessions Judge No.III,
Dharapuram.

2.The Inspector of Police,
Kangayam Police Station,
Kangayam.

3.The Superintendent of Prison,
Special Prison for Women,
Coimbatore.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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

nsd

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