



Crl.M.P.No.7740 of 2022
in Crl.A.No.24 of 2022

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RESERVED ON : 07.09.2022

PRONOUNCED ON : 21.09.2022

P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

ORDER

P.N.PRAKASH, J.

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 15.11.2021 passed in S.C.No.75 of 2018 on the file of the Sessions Court Magalir Neethi Mandram, (Fast Track Mahila Court), Erode and to enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner faced a prosecution along with one Vijayan (A2) in S.C.No.75 of 2018 on the file the Sessions Court Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, in which, by judgment and order dated 15.11.2021, Vijayan (A2) was acquitted, but, the petitioner was convicted and sentenced as follows:



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<i>Provision under which convicted</i>	<i>Sentence</i>
Section 392 IPC	Ten years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo two months simple imprisonment.
Section 302 IPC	Life imprisonment and fine of Rs.10,000/-, in default to undergo two months simple imprisonment.
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the aforesaid conviction and sentences, the petitioner has filed Crl.A.No.24 of 2022 with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.B.Thirumalai, learned counsel for the petitioner and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

5. This is a case of murder for gain, in which, it is alleged that the petitioner is said to have murdered his grandmother for the jewels she was wearing.



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6. Initially, on a complaint given by Pandian (P.W.1), father of the petitioner, the police registered a case in Crime No.459 of 2011 for 'woman missing'. Thereafter, the body of the deceased was found within the limits of Chithode Police Station, in connection with which, a case in Chithode Police Station Crime No.464 of 2011 was registered under Section 174 Cr.P.C.

7. It is stated that the petitioner surrendered before Paulraj (P.W.11), Village Administrative Officer (hereinafter “V.A.O.”) and gave an extrajudicial confession and thereafter, he was produced before the police, who arrested him and based on the police confession, the ornaments that were worn by the deceased were recovered from Manapuram Finance, where, the petitioner had pledged them.

8. The learned counsel for the petitioner submitted that the promissory note that was received from Manapuram Finance has only the signature of the petitioner and not that of the Branch Manager. He took us through the evidence of the Investigating Officer and submitted that he had



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failed to conduct investigation on several crucial aspects like failure to lift finger prints, failure to collect the call details of the accused, etc. He further submitted that Paulraj (P.W.11), V.A.O., did not support the prosecution case.

9. We went through the evidence of Paulraj (P.W.11), V.A.O. and found that he had not completely turned hostile to the prosecution case. Paulraj (P.W.11), V.A.O., was examined-in-chief on 22.04.2021, by which time, he had retired from service and the preamble portion of the deposition shows that he was sixty six years old. In his evidence, Paulraj (P.W.11), V.A.O., has stated that since the incident had taken place ten years ago, he was not able to remember the faces of the accused. However, he (P.W.11) has stated about the fact that on 09.07.2011, while he was in his office Babu @ Gopinath, the petitioner herein and Vijayan (A2) surrendered before him and stated that they were involved in the murder of the grandmother of the petitioner.

10. As regards the submission of the learned counsel for the



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petitioner that the promissory note does not contain the signature of the Branch Manager, we find that in the application for jewel loan (M.O.11) that was submitted to Manapuram Finance, the photograph of the petitioner is available.

11. 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 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

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



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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.

(P.N.P.,J.) (T.K.R.,J.)
21.09.2022

nsd



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To

- 1.The Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court), Erode.
- 2.The Inspector of Police,
Chithode Police Station,
Erode, Erode District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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