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Crl.M.P.Nos.8293, 4922, 6325, 6328 & 6381 of 20--

Orders Reserved on : 13..10..2022
Orders Pronounced on : 27..10..2022

Crl.M.P.No.8293 of 2022 in Crl.A.No.365 of 2022
Crl.M.P.No.4922 of 2022 in Crl.A.No.407 of 2022
Crl.M.P.No.6325 of 2022 in Crl.A.No.477 of 2022
Crl.M.P.No.6328 of 2022 in Crl.A.No.478 of 2022
and
Crl.M.P.No.6381 of 2022 in Crl.A.No.485 of 2022

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

COMMON ORDER

P.N.PRAKASH, J.

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioners by judgement and order dated 14.03.2022 passed in S.C.No.69 of 2012 by the learned Sessions (Fast Track) Judge, Namakkal, and to enlarge the petitioners on bail pending disposal of the appeal.

2. There were totally seven accused in the case. Aamaiyar @ Ravi who was arrayed as A7 in this case died during trial and hence, charge as against him stood abated. A.P.Boopathy was absconding and therefore, case against him has been split up. A1, the petitioner in Crl.M.P.No.4922 of 2022; A2, the petitioner in Crl.M.P.No.6381 of 2022; A4, the petitioner in



Crl.M.P.No.8293 of 2022; A5, the petitioner in Crl.M.P.No.6325 of 2022; and A6, the petitioner in Crl.M.P.No.6328 of 2022 only, were tried, convicted and sentenced as under by the learned Sessions (Fast Track) Judge, Namakkal, by judgement and order dated 14.03.2022 in S.C.No.69 of 2012:-

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentenced</i>
A1, A2 and A5	Section 120-B IPC	Each of them to Imprisonment for Life each and to pay a fine of Rs.10,000/- each in default of payment of fine to undergo simple imprisonment for one year
A1, A2, A4, A5 & A6	Section 148 IPC	Each of them to undergo Rigorous Imprisonment for three years
A1, A2, A4, A5 & A6	Section 341 IPC	Each of them to undergo Simple Imprisonment for one month
A2	Section 302 IPC	Imprisonment for Life and to pay a fine of Rs.10,000/- in default of payment of fine to undergo Simple Imprisonment for one year
A1, A4, A5 & A6	Section 302 r/w 149 IPC	Each of them to undergo Imprisonment for Life and to pay a fine of Rs.10,000/- each in default of payment of fine each of them to undergo Simple Imprisonment for one year
	The aforesaid sentences were ordered to run concurrently.	
	The trial court has ordered for set off under Section 428 Cr.P.C.	

Challenging the above said convictions and sentences, A1, A2 and A4 to A6 have filed appeals in Crl.A.No.407, 485, 365, 477 and 478 of 2022



respectively and these instant criminal miscellaneous petitions seeking suspension of sentence and bail.

4. Heard Mr.V.Rajmohan, learned counsel for the petitioner in Crl.M.P.No.8293 of 2022; Mr.R.Vivekananthan, learned counsel for the petitioner in Crl.M.P.No.4922 of 2022; Mr.S.Sheik Ismail, learned counsel for the petitioner in Crl.M.P.Nos.6325 and 6328 of 2022; Mr.S.Kaithamalai Kumaran, learned counsel for the petitioner in Crl.M.P.No.6381 of 2022; and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

5. It is the case of the prosecution that R.Siva @ Sivakumar (A1) was an extortionate money lender as well a compulsive womaniser, whose hatchet man was Aamaiyan @ Ravi (A7) [died during trial]; his close associate was one Boopathy (A3) [still absconding and the case against him has been split up]; Rajkamal @ Rajendran (A2) is the friend of A1; Ganesan @ Military Ganesan (A4) and Anbu @ Anbalagan (A6) are brothers-in-law of A1, they having married A1's two sisters; Arun @ Arunkumar (A5) is the son of Ganesan @ Military Ganesan (A4) and nephew of Siva @ Sivakumar (A1); Sometime in the first week of April, 2009, one Akila had borrowed a sum of



terms including imprisonment for life, as already stated supra.

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6. The arguments advanced by the counsel for the learned respective petitioners are briefly summarised as under:-

- (1) the evidence of P.W.1 is not reliable;
- (2) there is no corroboration for the evidence of P.W.1;
- (3) the evidence of D.W.1 clearly shows that P.W.1 was not present in the scene of occurrence;
- (4) the trial court has failed to consider the evidence of D.Ws.1 to 3, who were examined to prove the alibi;
- (5) the inquest report reached the court late;
- (6) the conspiracy witnesses turned hostile;
- (7) the statement of P.W.1 was recorded on 12.03.2010 and it reached the court only on 18.03.2020; and
- (8) A5 is an MBA graduate and he has been falsely implicated.



7. Per contra, the learned Additional Public Prosecutor refuted the aforesaid submissions and contended that Siva @ Sivakumar (A1) was tried for the rape of Akila and has been convicted in S.C.No.52 of 2013 on 23.07.2022 and was sentenced to undergo rigorous imprisonment for ten years. That apart, he also gave a long list of pending criminal cases against A1.

8. This court gave its anxious consideration to the rival submissions.

9. It is seen that immediately after the murder of Velusamy, on the complaint given by Jambu @ Shanmugasundaram (P.W.1), a case was registered in Pallipalayam Police Station in Crime No.310 of 2010 under Sections 147, 148, 302 and 506(II) of IPC. Since the brutal murder of Velusamy stirred the hornet's nest in the State, he being a prominent member of the CPI(M), the Director General of Police, transferred the case to the CBCID on 16.03.2010. The CBCID completed the investigation and prosecuted the accused in this case. Siva @ Sivakumar (A1) was arrested by the police in this case, but, after his release on bail, he absconded on 12.09.2013 and was declared as a proclaimed offender by initiating proceedings under Sections 82 and 83 Cr.P.C. He was ultimately re-arrested



on 17.04.2017 and was put for trial. Similarly, Rajkamal @ Rajendran (A2) also absconded on 08.06.2017 and he was re-arrested on 14.07.2017. Thus, from the conduct of these two petitioners, namely Siva @ Sivakumar (A1) and Rajkamal @ Rajendran (A2), they would not be entitled to suspension of sentence and bail because, if they are released on bail, they would not be available at the time of final disposal of the appeals preferred by them.

10. Coming to the various contentions raised by the defence, it is seen that for the incident which took place in the year 2010, the trial began with the examination of Jambu @ Shanmugasundaram (P.W.1) only on 21.11.2019, i.e., 9 years after the incident. Therefore, there are bound to be some discrepancies here and there in the evidence of the prosecution witnesses. The trial court has extracted the evidence of Jambu @ Shanmugasundaram (P.W.1) in para 9 (v) of the judgement wherein he has stated about the involvement of all the petitioners herein in the attack.

11. As regards the evidence of Madheswaran (D.W.1), even according to him, he came to the scene of occurrence only afterwards to take photographs. It is not his case that he was present at the time of the occurrence. Therefore, just because he had not stated anything about P.W.1,



it does not mean that P.W.1 was not there at the time of occurrence.

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12. It is seen that the Government of Tamil Nadu had appointed Mr.P.Thirumalairajan, Advocate, a seasoned and reputed criminal side practitioner in the trial court as Special Public Prosecutor to conduct the trial. Madheswaran (D.W.1), who is a press reporter, in his evidence has tried to implicate Mr.Thirumalairajan by alleging that he had prodded him (D.W.1) to give false evidence in the case. We are viewing this as an attempt by the accused to scuttle the trial by making such reckless allegations against the Special Public Prosecutor.

13. While considering the petition for suspension of sentence and bail, this court cannot appraise the evidence as in an appeal. Even in the FIR, the name of Siva @ Sivakumar (A1), Rajkamal @ Rajendran (A2), Ganesan @ Military Ganesan (A4), Arun @ Arunkumar (A5) and Anbu @ Anbalagan (A6) find place.

14. 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

¹ (2008) 5 SCC 230
<https://www.mhc.tn.gov.in/judis>



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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 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.”

15. From the available records, it could be seen that the accused had managed to delay the trial from 2010 to 2019. Thus, in the considered opinion of this court, this is not a fit case in which the petitioners/A1, A2 and A4 to

² 1977 SCC (Cri) 559
<https://www.mhc.tn.gov.in/judis>



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A6 could be granted suspension of sentence and bail, pending disposal of appeals.

In the result, these criminal miscellaneous petitions are devoid of merits and the same are accordingly dismissed. It is made clear that whatever stated above is only for the limited purpose of deciding these miscellaneous petitions.

[P.N.P., J.]

[TKR., J.]

27..10..2022

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