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Crl.M.P.No.8300 of 20__
in Crl.A.No.2 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM

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

Crl.M.P.No.8300 of 2022
in Crl.A.No.2 of 2022

Alayamani

.. Petitioner/Accused No.1

Vs.

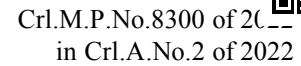
State represented by
The Inspector of Police,
Thalaivasal Police Station,
Salem District.
(Crime No.303 of 2018)

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed on the petitioner by judgment dated 17.08.2021 passed in S.C.No.206 of 2019 on the file of the I Additional District and Sessions Court, Salem and to enlarge the petitioner on bail pending disposal of the appeal.

For petitioner : Mr.N.Manoharan

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



ORDER

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment dated 17.08.2021 passed in S.C.No.206 of 2019 on the file of the I Additional District and Sessions Court, Salem and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who was the first accused in S.C.No.206 of 2019 before the I Additional District and Sessions Court, Salem, was convicted and sentenced as follows on 17.08.2021:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Alayamani	Section 120(b) IPC	Life imprisonment and fine of Rs.2,000/-, in default to undergo six months simple imprisonment.
	Section 120(b) r/w 302 IPC	Life imprisonment and fine of Rs.2,000/-, in default to undergo six months simple imprisonment.
The aforesaid sentences were ordered to run concurrently.		

3. Challenging the above conviction and sentences, the petitioner has filed CrI.A.No.2 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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Crl.M.P.No.8300 of 20__
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4. Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution in brief is that the petitioner is the first accused in this case, who has developed illicit intimacy with Thenkumar, second accused in this case, pursuant to which, the petitioner had given money to Thenkumar (A2) by pledging her jewels. Later, the relationship came to be known by the deceased Kaliyamoorthy, husband of the petitioner. The petitioner finding that Kaliyamoorthy would be a hindrance to the affair, the petitioner and the other accused conspired to do away with Kaliyamoorthy, pursuant to which, on 18.08.2018, at early hours, Thenkumar (A2) and Harikrishnan (A3) criminally trespassed into the house of Kaliyamoorthy and murdered him. The petitioner was out of station on the day of occurrence.

6. After completing the investigation, the respondent/police has filed a final report against the petitioner and two other accused for the offences under Sections 120-B and 302 IPC.



Crl.M.P.No.8300 of 20__
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WEB COPY

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 last seen theory with regard to conspiracy. Manikandan (P.W.16), who is the cousin brother of Kaliyamoorthy, speaks about having seen the petitioner speaking to the other accused in a field on the previous day of occurrence, but, he has not spoken to about the conversation between them. Further when he (P.W.16) was confronted, he has admitted that though he had been examined thrice by the police immediately after the occurrence, he has not stated about the fact that he had seen the petitioner with the other accused on the previous day of occurrence and thereby, the evidence with regard to conspiracy cannot be believed. Further, as per the case of prosecution, the petitioner was not available in the village on the particular day and she had gone to Thirunallaru along with her children and other villagers.

9. The learned Additional Public Prosecutor would submit that the petitioner is the wife of the deceased Kaliyamoorthy and she developed illicit



intimacy with Thenkumar (A2) and finding that her husband was a hindrance to the affair, had conspired with the other accused and murdered Kaliyamoorthy. He opposed for grant of suspension of sentence and bail to the petitioner.

8. The petitioner has raised substantial grounds in the appeal, which require detailed appraisal. Moreover, the petitioner has been in incarceration since 17.08.2021. 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.

9. 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 I Additional District and 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;



WEB COPY



Crl.M.P.No.8300 of 20__
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- (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;
- (iv) The petitioner shall furnish her 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
- (v) Till the disposal of the above appeal, the petitioner shall not leave Tamil Nadu without the permission of the trial Court. In case, permission is granted, the petitioner shall furnish the place where she is going to reside and the contact person details viz. aadhar card, mobile number, etc. that are required by the trial Court.

(S.V.N., J.) (A.D.J.C., J.)
11.07.2022

nsd



WEB COPY



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To

- 1.The I Additional District and Sessions Judge,
Salem.
- 2.The Inspector of Police,
Thalaivasal Police Station,
Salem District.
- 3.The Superintendent of Prison,
Central Prison,
Salem.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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

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