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Crl.M.P.No.11316 of 2022 in Crl.A. No.405 of 2020

RESERVED ON : 16.09.2022
DELIVERED ON : 28.09.2022

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

ORDER

P.N. PRAKASH, J.

The accused in S.C. No.141 of 2016, who are the petitioners herein, have been convicted and sentenced *vide* judgment and order dated 13.02.2020 by the III Additional Sessions Court, Poonamallee, as under:

Accused	Provisions under which convicted	Sentence
Rajaguru (A.1)	S.302 r/w S.34 IPC S. 341 IPC	Life imprisonment and fine of Rs.7,000/-, in default to undergo six months rigorous imprisonment Simple imprisonment for one month
Lakshmipathi (A.2)	S.302 r/w S.34 IPC S.341 IPC	Life imprisonment and fine of Rs.7,000/-, in default to undergo six months rigorous imprisonment Simple imprisonment for one month



2 Challenging their conviction and sentences, they have filed

Crl.A.No.405 of 2020 together with Crl.M.P. No.11316 of 2022 seeking suspension of sentence and bail.

3 It is the case of the prosecution that the deceased Mastan had financial dealings with Rajaguru (A.1) and Lakshmipathy (A.2), the petitioners herein, and had to make some payment to them. It is alleged that Rajaguru (A.1) called Mastan to come over to his house and accordingly, Mastan went along with his friend Sridhar (P.W.4) to the house of Rajaguru (A.1) in the night of 12.07.2015 and while they were waiting for Rajaguru (A.1) and Lakshmipathy (A.2), they both came by a motorcycle and indiscriminately attacked Mastan and Sridhar (P.W.4) and caused the death of Mastan and injuries to Sridhar (P.W.4).

4 Mr. R. Sankarasubbu, learned counsel for the petitioners contended that the petitioners have been in custody since 13.02.2020, *i.e.*, for over two years, and therefore, their sentence should be suspended and they granted bail. He further contended that Sridhar (P.W.4) has stated that he had not really seen the attackers and only in the police station, he was shown them by the police. It is his further contention that Vijaya Shankar (P.W.3) and Sridhar (P.W.4), eyewitnesses to the incident also, did not support the case of the prosecution in the cross-examination.



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5 *Per contra*, Mr. R. Muniyapparaj, learned Additional Public Prosecutor, submitted that this is a case of brutal murder and gave a list of cases against Rajaguru (A.1) and Lakshmipathy (A.2) which reads as under:

**“Accused – Rajaguru
T.6, Avadi P.S. H.S. No.4**

<i>Sl.No.</i>	<i>P.S.</i>	<i>Cr.No.</i>	<i>Section</i>	<i>Stage</i>
1	T.6	582/2015	341,324,302 IPC	CON/13.02.2020
2	T.6	583/2015	341,294(b),307,336, 427 & 506 (II) IPC	P.T./Framing of charge
3	T.6	1182/2017	294(b), 384 and 506 (II) IPC	P.T.
4	T.6	195/2018	294(b), 323 and 324 and 506 (II) IPC	U.I.
5	T.6	618/2019	341, 294(b), 323, 336, 427 & 506(II) IPC	U.I.
6	Andhra Pradesh State Kadappa District, Kodur Railway P.S.	52 of 2016	147,148,452,307 r/w 149 IPC	--

GOONDAS

BCDFGISSSV– 781/15 DATED 24.08.2015

Now, the accused is in Cuddalore Jail in T6, Avadi P.S. Cr.No.582 of 2015 (CON)”



ACCUSED – LAKSHMIPATHY
T.6, Avadi P.S.H.S. No.5

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<i>Sl.No.</i>	<i>P.S.</i>	<i>Cr.No.</i>	<i>Section</i>	<i>Stage</i>
1	T6	582/15	341,324 & 302 IPC	CON/13.02.2020
2	T6	583/15	341,294(b),307,336, 427 & 506(II) IPC	P.T./Framing of charge
3	T6	195/18	294(b),323,324 & 506(II) IPC	U.I.
4	T6	766/2018	341,294(b),336,323, 392,397 & 506(II) IPC	U.I.
5	T6	618/2019	341, 294(b), 323, 336, 427,397 & 506 (II) IPC	U.I.
6	T7	959/2019	294(b), 324 & 506(II) IPC	U.I.
7	T7	998/2019	341,294(b),323,397, 336,427 & 506(II) IPC	U.I.
8	Andhra Pradesh State Kadappa District, Kodur Railway P.S.	52/2016	147,148,452 & 307 r/w 149 IPC	

Goondas

1 BCDFGISSSV.780/15 dated 24.08.2015

2 BCDFGISSSV.113/2018 dated 08.11.2018

“Now, the accused is in Cuddalore Jail in Cr. No.582/2015 (CON.)”

6 Refuting the above, Mr. Sankarasubbu submitted that those cases are old cases and there are no fresh cases as against the petitioners.

7 This Court gave its anxious consideration to the rival submissions.



8 It is seen that Vijay Shankar (P.W.3) was examined in chief on 17.07.2017. In the chief-examination, he has clearly implicated the petitioners narrating as to how they attacked Masthan and Sridhar (P.W.4). However, he was not cross-examined on that day and he was recalled on 27.07.2017 and cross-examined. On that day, he slightly slipped down from his version which is quite understandable, for, human brain is not a tape recorder to play verbatim what was recorded earlier.

9 As regards the argument of Mr. Sankarasubbu that the cases set out in paragraph 5 above are old ones and not fresh ones, the fact remains that these petitioners have been in incarceration from 13.02.2020 and therefore, there cannot be any possibility of they getting involved in fresh cases.

10 At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) [(2008) 5 SCC 230]**, 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



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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.” (emphasis supplied)

In view of the above authoritative pronouncement of the Supreme Court, the opinion of this Court, in a case of such a grave nature is that, it would not be appropriate to grant suspension of sentence and bail to the petitioners and accordingly, this petition stands dismissed. However, it is made clear that the aforesaid observations are confined to the limited extent of deciding the instant application for suspension of sentence and bail and shall not be a bar for the petitioners in urging the grounds raised in this application at the time of final hearing of the criminal appeal.

(P.N.P., J.) (TKR, J.)
28.09.2022

cad



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- To
- 1 The III Additional Sessions Judge
Poonamallee
 - 2 The Inspector of Police
T-6, Avadi Police Station
Thiruvallur District
 - 3 The Public Prosecutor
High Court of Madras
Chennai 600 104



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