



Crl.M.P.Nos.12834 & 12307 of 2022
in Crl.A.Nos.201 & 207 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 19.09.2022

ORDER PRONOUNCED ON : 28.09.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

Crl.M.P.Nos.12834 & 12307 of 2022
in
Crl.A.Nos.201 & 207 of 2022

1.Subramani
S/o.Nagalingam

2.Murali
S/o.Harikrishnan

.. Petitioners in Crl.M.P.No.12834/2022

Shanmuganathan
S/o.Ramasamy

.. Petitioner in Crl.M.P.No.12307/2022

Vs.

State represented by
Assistant Commissioner of Police,
Thyagaraya Nagar Range,
Thyagaraya Nagar,
Chennai - 600 017.
Crime No.448 of 2016

.. Respondent in both petitions



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Criminal Miscellaneous Petitions filed under Section 389(1) Cr.P.C. praying to suspend the sentence imposed by Principal Sessions Court, Chennai, in S.C.No.349 of 2016 dated 24.02.2021 and enlarge the petitioners on bail pending disposal of the appeals.

For Petitioners : Mr.R.Venkatraman
[Crl.M.P.No.12834/2022]
Mr.S.Hameed Ismail
[Crl.M.P.No.12307/2022]

For Respondent : Mr.R.Muniyapparaj
[in both petitions] Additional Public Prosecutor

COMMON ORDER

P.N.PRAKASH, J

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 24.02.2021 passed in S.C.No.349 of 2016 on the file of the Principal Sessions Court, Chennai and to enlarge the petitioners on bail pending disposal of the appeals.



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2. The petitioners, who are A2, A4 and A5, in S.C.No.349 of 2016 on the file of the Principal Sessions Court, Chennai, were convicted and sentenced as follows on 24.02.2021:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Shanumuganathan [A2]	Section 120-B r/w 302 IPC	Life imprisonment and fine of Rs.5,000/-.
Subramani [A4]	Section 302 r/w 34 IPC	Life imprisonment and fine of Rs.5,000/-
Murali [A5]	Section 302 r/w 34 IPC	Life imprisonment and fine of Rs.5,000/-

3. Challenging the above conviction and sentences, the petitioners have filed Crl.A.Nos.201 & 207 of 2022 and the petitioners are seeking suspension of sentence and bail in these present petitions.

4. Heard Mr.R.Venkatraman and Mr.S.Hameed Ismail, learned counsel for the petitioners and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.



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5. It is the case of the prosecution that Lokeshini [A1] is the wife of Murugan [deceased], who was an Advocate. Lokeshini [A1] had an affair with Shanumuganathan [A2] and therefore, they decided to get rid of Murugan. Lokeshini [A1] informed Shanumuganathan [A2] about the movements of her husband Murugan and on 05.06.2016 at about 1.00 in the afternoon, while Murugan was returning home, he was waylaid and brutally attacked and murdered in broad daylight by the assailants Subramani @ Subbu @ Kolar Subbu [A3], Subramani [A4], Murali [A5] and Justin [A6].

6. Learned counsel for the petitioners contended that most of the witnesses had turned hostile and there is no legal evidence to sustain the conviction. Learned counsel took us through paragraph Nos.65, 69 and 70 of the trial Court's judgment and contended that there is no link evidence to connect the petitioners with the crime.

7. *Per contra*, learned Additional Public Prosecutor refuted the aforesaid contentions.



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8. In paragraph No.65, the trial Court has discussed the material evidence to implicate the petitioners in the crime. The material objects recovered in this case were subjected to forensic examination. Clothing and weapons owned and used by the accused were found with bloodstains of Group-A, which is that of Murugan. Though most of the witnesses had turned hostile, the prosecution has established the case with circumstantial and electronic evidences. The probative value of those evidences has to be determined only in the final disposal of the appeals.

9. 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 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

¹ (2008) 5 SCC 230



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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.”

(emphasis supplied)

Accordingly, these criminal miscellaneous petitions are dismissed.

[PNP, J.] [TKR, J.]
28.09.2022

Index: Yes/No
gm

To

- 1.The Principal Sessions Court,
Chennai.
- 2.The Assistant Commissioner of Police,
Thyagaraya Nagar Range,
Thyagaraya Nagar,
Chennai - 600 017.
- 3.The Public Prosecutor,
High Court, Madras.



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Pre-delivery Order in
Crl.M.P.Nos.12834 & 12307 of 2022
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28.09.2022