



Crl.M.P.No.13719 of 2022 ...
Crl.A.No.480 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2022

PRONOUNCED ON:2.11.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.M.P.No.13719 of 2022

in

Crl.A.No.480 of 2020

Arun @ Arunkumar

.. Petitioner/4th Appellant/A8

Vs.

State by

Inspector of Police

Law&Order,

H-1, Washermenpet Police Station,

Chennai – 21.

(Crime No.832/2013)

.. Respondent/Respondent/Complainant

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed on the petitioner in S.C.No.282 of 2016 dated 17.09.2020, on the file of the II Additional District and Sessions Judge, Chennai and enlarge him on bail, pending disposal of Crl.A.No.480 of 2020.

For Petitioner : Mr.R.Sankara Subbu
For Mr.Ilayaraja Kandasamy

For Respondent : Mr.R.Muniyapparaj



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Additional Public Prosecutor

ORDER

RMT.TEEKAA RAMAN, J.,

This is the second bail application.

2. The convicted accused A8 has filed this Criminal Miscellaneous Petition for suspension of sentence awarded in S.C.No.282 of 2016.

3. By a judgment dated 17.09.2020, the learned II Additional Sessions Judge, Chennai in S.C.No.282 of 2016 had laid the conviction and sentenced the petitioner, who is the 4th appellant in Crl.A.No.480 of 2020.

4. The learned II Additional District and Sessions Judge, Chennai in S.C. No.282 of 2016 vide judgment dated 17.09.2020 convicted and sentenced the petitioner/4th appellant/A8 as under:-

<i>Sl.No.</i>	<i>Offence</i>	<i>Sentence</i>
1	Section 341 r/w 149 IPC	To undergo SI for one month.
2	Section 148 of IPC	To undergo RI for three years and to pay a fine of Rs.1,000/-, in default to undergo SI for six months.
3	Sectio 302 r/w 149	To undergo Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo SI for one year.

5. The case of the prosecution is that:

a) The deceased Venkatta @ Venkatesan was the associate of gangster Ravi @ Kalvettu Ravi. The 1st accused is a rowdy element and accused 2 to 11 are his close companions. The 1st accused was having



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enmity with Ravi @ Kalvettu Ravi with respect to their notorious influence in their area and the activities of the deceased Venkatta @ Venkatesan made gangster Ravi @ Kalvettu Ravi more powerful. So the 1st accused want to do away with the deceased. While the 1st and 2nd accused were in Puzhal Jail. Both are conspired together to murder Venkatta @ Venkatesan. After the release of 2nd accused from jail, he conspired with his friend the 3rd accused for the murder of the deceased. The 1st accused after his release from jail, he conspired with his friends, the 4th, 6th and 7th accused to murder the deceased. Thereafter, the 4th accused conspired with 8 to 11th accused, thereby all the accused 1 to 11 conspired to murder Venkatta @ Venkatesan. In pursuance of the conspiracy, the accused 1 to 3 engaged 4 to 11 for committing the murder of Venkatta @ Venkatesan and had instigated the accused 4 to 11 for the commission of the crime.

b) In furtherance of the instigation of accused 1 to 3, the 4th accused engaged 8th and 11th accused to watch the movements of deceased Venkatta @ Venkatesan. On the information given by the 8th and 11th accused, the accused 4 to 11 with the common intention of murdering the deceased, on 10.08.2013 at about 5.30 p.m., unlawfully assembled in front of Kannan Saloon Shop at Valluvan street with deadly weapons. At that time, the deceased along with his daughter Priya (P.W.3),



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Son Akash (P.W.4) at the pillion was going to drop them at their tuition class in his Honda Activa two wheeler bearing Registration No.TN-03-F-4431. When the deceased reached near the place of occurrence, the accused 4 to 11 wrongfully restrained him and the 10th accused Anand @ D.L.P.Anand raised the accelerator of the deceased and kicked the two wheeler. The deceased and his children fell down. At that time, the 8th accused Arun @ Arunkumar and 11th accused Bhaskar were watching the movements of the public and prevented Venkatta @ Venkatesan from escaping.

c) The 4th accused Appala Prakash inflicted injury on the middle of the head of the deceased with knife. The 5th accused Ravindran cut the deceased with knife on the backside of his dead, the 6th accused Saranraj and 7th accused Karthick repeatedly inflicted injury on the head and hands of the deceased with their knives. The 8th accused Arun @ Arunkumar inflicted cut injury on the head of the deceased with knife, 9th accused Prakash @ Desappan inflicted cut injury on the backside of the head of the deceased with the knife which fell down from the hands of 5th accused Ravindran. The deceased sustained multiple cut injuries and he died on the same day at Government Stanley Hospital at 6.30p.m. Thereby the accused 1 and 3 have committed offence punishable under Sections 120-B, 302 read with 109 I.P.C and the accused 4, 6 to 11 have committed



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offence punishable under Sections 120-B, 148, 341 read with 149 and 302
read with 149 I.P.C.

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6. Initially, there were 11 accused. 2nd and 5th accused died before trial and hence charges against them stands abated and remaining 9 accused have faced the trial.

7. During the trial, prosecution examined 30 witnesses P.W.1 to P.W.30 and marked 20 documents Exs.P1 to P22 and material objects M.O.1 to M.O.9 were marked.

8. On completion of the formalities under Section 313(b) of Cr.P.C., the learned Sessions Judge has acquitted A1,A3 and A11 and the convicted accused A4, A6, A7, A8, A9, A10 have preferred this above appeal.

9. Pending appeal, this Criminal Miscellaneous Petition has been filed by the 4th appellant/A8, seeking suspension of sentence.

10. Heard the learned counsel for the petitioner/4th appellant and the learned Additional Public Prosecutor.

11 (a). The learned Additional Public Prosecutor has submitted that A8/petitioner is involved in two cases viz., (i) Cr.No.832 of 2013 in H1 Police Station which has ended in conviction for the offence under Section 320 I.P.C. on 17.09.2020, (ii) the other case in Cr.No.834 of 2013 in H1 Police Station, wherein the major offence was under Section 307 has ended in acquittal on 10.07.2019.



(b) The lower court records reveals that A8-Arun @ Arunkumar was absconding and N.B.W was pending between 27.06.2018 and 03.09.2018.

12. The prime contention of the learned counsel for the petitioner is that no Test Identification Parade was conducted and the private prosecution witnesses have identified the accused only in the Court and conviction was laid by relying upon the version of the relatives who are all interested witnesses and the identity of the accused is not proved by the prosecution and the accused has been falsely implicated in this case.

13. Mr.R.Sankarasubbu, learned counsel for the petitioner/A8 would contend that the deceased was a rowdy element and hence some other person could have committed murder on him and hence he may be enlarged on bail.

14. Submissions of the learned counsel for the petitioner/A8 and the learned Additional Public Prosecutor have been taken note of.

15. Evidence of P.W.1 widow of the deceased; P.W.2 friend of the deceased; P.W.3 and P.W.4 daughter and son of the deceased and P.W.5 independent witness were perused.

16. In the evidence of P.W.1, he has correctly identified the 4th accused, 10th accused, 11th accused, 5th accused, 8th accused and 9th accused at the police station and at the request of P.W.13/Investigation Officer, he also identified 6th and 7th accused on various dates.

17. Her evidence is clear to the identification of the accused herein.



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She was standing near the Balcony while the deceased along with his kids P.W.3 and P.W.4 was moving to tuition in a two wheeler. The accused Anand/A10 raised the accelerator of the two wheeler and all the 3 persons in the two-wheeler fell down and at that time the accused Appala Prakash A4 cut her father with a knife on his head. P.W.3 has identified the weapon used by A4/Appala Prakash in the crime before the Court. The evidence of P.W.1, P.W.2, P.W.3 and P.W.4 are clear and cogent as to the happening of the act of the accused on the various part of the deceased. P.W.3 and P.W.4 deceased were accompanying to the tuition and the A4 has raised the accelerator of the two wheeler in the process, all the 3 felt down from the vehicle.

18. After going through Ex.P8 inquest report prepared by P.W.30 Investigation Officer and P.W.25 Doctor the medical witness who had noted down 8 injuries on the deceased at the first instant and as per Ex.P14 Postmortem Certificate, the deceased had sustained about 12 cut injuries apart from the stab injuries and the evidence of P.W.19 Doctor that the right fore arm of the deceased has been completely severed from his hand and opinion of the P.W.26-Postmortem Doctor that the deceased could have died of shock and haemorrhage due to multiple injuries and hence, we find that merely because P.W.1, 3, and 4 are the relatives, their evidence cannot be brushed aside, since they are natural witnesses. The complaint and F.I.R has reached the Court at the earliest time and the



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version of the P.W.1 the author of the Ex.P1 complaint clearly demonstrates the presence of the P.W.2, P.W.3 and P.W.4 and also the accused. Hence the non conducting of the identification is not a fatal to the prosecution, in view of the presence of the direct eye witnesses, such a plea pale into insignificance.

19. Further, from the evidence, it is established that the petitioner herein/A8 along with other accused viz., A4, A6, A7, A9 and A10 had definitely formed an unlawful assembly and the common object of that unlawful assembly was to commit murder of the Venkatta and in prosecution of the common object the petitioner herein/A8 and other accused had surrounded the deceased and repeatedly inflicted injuries on the deceased Venkatta at Valluvan Street with M.O.1 series weapons.

20. Therefore, though the learned counsel for the petitioner could contend that the petitioner is in custody for more than 2 years, in view of the specific overact alleged against this accused that has been held to be proved beyond reasonable doubt by the trial Court based upon the natural witnesses P.W.1, P.W.2, P.W.3 and P.W.4 coupled with medical evidence and in the absence of any deviation touching upon the prosecution, we find that this is not a fit case for grant of bail.

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



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SCC 230J, has held as follows:

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“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.” (emphasis supplied)

22. Accordingly, this Crl.M.P.No.13719 of 2022, stands dismissed.



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23. We observe that the finding rendered by us is limited only for the purpose of disposal of this Criminal Miscellaneous Petition and we are not expressing any opinion on the main appeal.

(P.N.P.J.) (T.K.R.J.)
2.11.2022

nvi/ars

Note: [The Registry is directed to prepare typed set of papers at the earliest.]

To

1. The II Additional District and Sessions Judge,
Chennai.
2. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

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