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CrI.M.P.No.13573 of 2022
in CrI.A.No.986 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM :

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND**

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.M.P.No.13573 of 2022

in

CrI.A.No.986 of 2022

Kasi Viswanathan
S/o.Subba Naidu

... Petitioner

Vs.

State by:
The Inspector of Police
S8, Adambakkam Police Station,
Chengalpet District.
(Crime No.29 of 2011)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Section 389(1) r/w 439 of Cr.P.C., to suspend the sentence imposed on the petitioner by the learned Additional District Sessions Judge, Chengalpattu, made in S.C.No.290 of 2011 dated 13.04.2022 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mrs.P.Krithikakamal
for Mr.J.Arul Prakasam

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

[Made by **N. ANAND VENKATESH, J.**]

This petition has been filed seeking for the suspension of sentence imposed in S.C.No.290 of 2011 by the learned Additional District Sessions Judge, Chengalpattu through judgment and order dated 13.04.2022.

2. The petitioner was convicted for an offence u/s.302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.1,000/- and in default to undergo three months rigorous imprisonment.

3. The case of the prosecution is that the deceased Santhakumari is the wife of the petitioner and the petitioner doubted the character of his wife. One day prior to the occurrence i.e. on 13.01.2011, the petitioner saw his wife along with Prabakaran [PW-8] in his house and on seeing that, the petitioner locked the door, called the neighbours and took PW-8 and the deceased to the police station. The police pacified the parties.

4. On 14.01.2011, at about 06.00 a.m., the petitioner is said to have attacked the deceased with MO-1 indiscriminately and as a result of the same, the deceased died on the spot.



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5. Heard Mrs.P.Krithikakamal, learned counsel appearing on behalf of the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of the respondent.

6. The prosecution has attempted to establish its case through circumstantial evidence. The circumstances that were put against the accused persons are (a) motive (b) last seen theory and (c) recovery of the material objects and serology report.

7. Insofar as the motive to the crime is concerned, the same has been spoken to by PWs.1 to 3. The important circumstance that was put against the accused person was the last seen theory and to establish the same, the prosecution examined PWs.4 to 7. PWs.5 and 7 turned hostile and hence, the evidence of PWs.4 and 6 gains significance.

8. The incident is said to have taken place on 14.01.2011 at about 06.00 a.m. PW-4, in his evidence, has stated that he heard about his incident at about 06.00 a.m. on 14.01.2011. PW-6, in his evidence, has stated that he saw the petitioner leaving his house at about 02.00 a.m. along with a bag and thereafter, he came to know that the petitioner had killed his wife. Considering the evidence



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of PWs.4 and 6, it is contended that the last seen theory as sought to be established by the prosecution has not been properly proved.

9. Even insofar as the recovery and the serology report that was relied upon by the prosecution, the learned counsel for the petitioner has pointed out certain contradictions in the evidence of PWs.9 and 10.

10. Taking into consideration the facts and circumstances of the case and on carefully considering the materials available on record and submissions made on either side, we find that there are arguable points in this appeal. The petitioner has already suffered incarceration for more than six months. That apart, the petitioner has also paid the fine amount of Rs.1,000/- on 13.04.2022. It will take some more time for this Court to take up the criminal appeal for final hearing.

In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No.290 of 2011 dated 13.04.2022 subject to the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional District Sessions Judge, Chengalpattu;



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- (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 cards or Bank passbooks to ensure their identity; and
- (iii) The petitioner shall appear before the respondent police every Monday at 10.30 a.m., for a period of 8 weeks. After completion of the said period, the petitioner shall report before the learned Additional District Sessions Judge, Chengalpattu, on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he 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 his absence, as directed by the trial Court.

[PNP., J]

[NAV., J]
14.12.2022

Index : Yes/No
Speaking order /Non-Speaking order
gm



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P.N.PRAKASH, J.
and
N. ANAND VENKATESH, J.

gm

To

- 1.The Additional District Sessions Judge,
Chengalpattu.
- 2.The Superintendent of Prison,
Central Prison, Puzhal.
- 3.The Inspector of Police
S8, Adambakkam Police Station,
Chengalpet District.
- 4.The Public Prosecutor,
High Court of Madras.

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