



Crl.M.P.No.17220 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 06.12.2022
Pronouncing orders on : 15.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.M.P.No.17220 of 2022
in Crl.A.No.1121 of 2022

K.Siva

... Petitioner

Vs.

State by;
The Inspector of Police
Kachirapalayam Police Station,
Kallakurichi.
(Crime No.138 of 2019)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Section 389(2) of Cr.P.C., to suspend the sentence imposed in Special S.C.No.172 of 2019 on 28.06.2022, on the file of the District and Sessions Judge, Kallakurichi and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.D.Ashok Kumar

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

N. ANAND VENKATESH, J.

This petition has been filed by A1 seeking for the suspension of sentence imposed in Spl.S.C.No.172 of 2019 by the III Additional District and Sessions Judge, Kallakurichi through judgment and order dated 28.06.2022.

2.The Court below convicted and sentenced the petitioner in the following manner:

S.No	Conviction for offence under	Sentence/Punishment
1	Section 120-B IPC	Life imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months.
2	Section 302 IPC	Life imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months.

3.The case of the prosecution is that the deceased Venkatesan was approached by A1 and A2 seeking for financial assistance. For the said purpose,



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A1 is said to have given the original document of his property to the deceased and a sum of Rs.50,000/- was lent to A1. There was some misunderstanding in this transaction and there was previous enmity between the accused persons and the deceased. As a consequence, A1 and A2 hatched a conspiracy and decided to do away with the deceased. In continuation to this conspiracy, A1 and A2 made the deceased accompany them on 25.03.2019 in a two wheeler and on 26.03.2019, the deceased was found dead near Gomugi river. There are totally two accused persons in this case and the petitioner is arrayed as A1. The overt act attributed against A1 is that he kicked the deceased repeatedly in his head and neck and A2 had hit the deceased with a beer bottle on his head.

4.Heard Mr.D.Ashok Kumar, learned counsel appearing on behalf of the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of the respondent.

5.The main ground that was urged by the learned counsel for the petitioner is that the prosecution had completely concealed the very genesis of the case. The complaint is said to have been given by PW-1, who is the father of the deceased at about 8 a.m. on 26.03.2019. The investigation was taken up by PW-20 and she came to the scene of occurrence at about 11 a.m. to prepare the Observation



Mahazar, Sketch and to conduct the inquest. While so, it is clear from the evidence of PW-9 and PW-10, who are the Village Administrative Officer and the Village Assistant, respectively that the police were present in the scene of crime even before the incident had taken place at about 6.40 a.m. on 26.03.2019.

6.It was further urged before this Court that there was an earlier complaint and PW-20 in her evidence has stated that she is not aware about the person who gave the complaint and she did not record the statement of the complainant.

7.The last scene theory which was the main link in the chain of circumstances was sought to be proved through PW-5 as if he saw the deceased along with the accused persons at 12.30 a.m. and PW-5 did not support the case of the prosecution. In view of the same, there is a snap in the chain and this vital lapse was not properly appreciated by the Court below.

8.The motive which was yet another link in the chain of circumstances was also not properly proved by the prosecution. That apart, there are major contradictions in the evidence rendered by the witnesses which improbabilises the case of the prosecution.



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9. 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 nearly six months and there are no bad antecedents against the petitioner. That apart, the petitioner has also paid the fine amount of Rs.20,000/- on 26.10.2022. It will take some more time for this Court to take up the criminal appeal for final hearing.

10. In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in Spl.S.C.No.172 of 2019 dated 28.06.2022 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 District and Sessions Judge, Kallakurichi;
- (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



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- (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 District and Sessions Judge, Kallakurichi, 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.

(P.N.P.,J.) (N.A.V.,J.)
15.12.2022

Internet : Yes/No

Index : Yes/No

Speaking order /Non-Speaking order
ssr



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- To
- 1.The District and Sessions Judge, Kallakurichi
 - 2.The Superintendent of Prison,
Central Prison, Cuddalore.
 - 3.The Inspector of Police
Kachirapalayam Police Station,
Kallakurichi.
 - 4.The Public Prosecutor,
High Court of Madras.



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P.N.PRAKASH,J.

and

N. ANAND VENKATESH,J.

ssr

Pre-Delivery Order in
Crl.M.P.No.17220 of 2022
in Crl.A.No.1121 of 2022

15.12.2022