



**Crl.M.P. No.271 of 2023
in Crl. A. No.26 of 2023**

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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

(Order of the Court was made by M.SUNDAR,J.,)

At the outset, we find that all the four accused in the Trial Court have been shown as petitioners in the captioned 'Criminal Miscellaneous Petition' (hereinafter 'Crl.M.P.' for the sake of brevity) which is for suspension of sentence under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity].

2. To be noted, the conviction and sentence have been made vide judgement dated 12.10.2022 in S.C.No.68 of 2019 (CNR No.TNSA1A-000112-2019) on the file of Additional District Judge, Additional District Fast Track Court, Mettur.

3. All the four accused are related. A2 and A3 are the father and mother respectively of A1 and A4 is sister of A1. In and by the aforementioned judgment of Trial Court, A2 to A4 have been imposed fine only and they have not been imposed sentence.



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Mr.T.Muruganantham, learned counsel for petitioner on instructions submits that A2 to A4 have paid the fine amounts. This means that the question of suspension of sentence as regards A2 to A4 does not arise. Therefore, captioned Crl.M.P. is dismissed qua petitioners 2, 3 and 4 who are A2, A3 and A4 respectively before the Trial Court.

4. As regards A1, the sentence imposed is as follows:

Sl.No.	Section	Sentence
1	302 IPC	Life imprisonment and fine of Rs.10,000/- i/d one year rigorous imprisonment
2	324 IPC	Rs.2,000/- fine i/d three months simple imprisonment
3	294(b) IPC	Rs.500/- fine i/d two weeks simple imprisonment

5. Learned counsel submitted that the first petitioner before us (A1 before the Trial Court) remains incarcerated from the date of conviction i.e., 12.10.2022. This Court is informed that first petitioner was in prison pending investigation also but the exact number of days and dates of incarceration are not available.



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6. Be that as it may, learned counsel for first petitioner projected the argument that the post mortem doctor has deposed as P.W.10 before the Trial Court, his deposition is captured in paragraph 8.6 of the Trial Court judgment and the same brings to light that the overt act attributed to first petitioner cannot be the proximate cause of death. Learned counsel also projected the argument that the stick (களிகைவ) was not recovered from the scene of occurrence.

7. We have noticed that these two points have not been raised in the captioned Crl.M.P. petition and therefore the same have not been met much less met with specificity in the counter filed by the learned Prosecutor. In this regard, we remind ourselves that provisos to Section 389(1) of Cr.P.C. were introduced in 2006 (23.06.2006) and that it applies to cases where offences are punishable with death, life and term of not less than ten years. To be noted, we are concerned with the first proviso to Section 389(1) of Cr.P.C. This proviso mandates that the Public Prosecutor should be given an opportunity for showing cause in writing against release. We are of the view that only when the point that is projected by the protagonist of the suspension of



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sentence petition is articulated in the petition, learned Prosecutor will be able to meet the same in his counter/objections which is filed for the purpose of showing cause in writing against release and only if this is done the objective/purpose of the proviso will be achieved/satisfied.

8. Faced with the above situation, learned counsel for first petitioner sought leave of this Court to withdraw the captioned Crl.M.P. Request acceded to, making it clear that (though it is not really necessary as any number of suspension of sentence petitions can be filed) that the first petitioner can come up with the same prayer articulating the aforementioned point/s along with a typed set containing deposition that is being relied on.

9. To be noted, learned counsel on record for petitioner has made an endorsement qua withdrawal in the case file and a scanned reproduction of the same is as follows:



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*The petitioner may be
permitted to withdraw
P. Muruganatham
27/7/2023
P. Muruganatham
418/1985
COUNSEL FOR PETITIONER/*

Set
DISTRICT: SALEM
HIGH COURT: MADRAS
Crl.M.P.No. *271* of 2023
In
C. A. No. *26* of 2023
Against
S. C. No. 68/2019
(On the file of Additional District
Pastrack Court, Mettur)

*Withdrawal order
Sig
5/1/23
1461*

**SUSPENSION OF
SENTENCE**

Signature
05 JUN 2023
Criminal
Session

M/s.T.MURUGANANTHAM
(Enl.No.418/1985)
M.RAJKUMAR
(Enl.No.550/2018)
M.PRAVEEN
(Enl.No.2111/2021)
T.BALAJI
(Enl.No.5721/2021)
COUNSEL FOR PETITIONER
CELL: 9841639217

10. Captioned Crl.M.P. is disposed of as closed/withdrawn albeit with the aforementioned observations and preservation of rights.

mmi

**[M.S.J.,] [R.S.V.J.,]
27.07.2023**



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27.07.2023