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Crl.M.P.No.2557 of 2023 in Crl.A.No.1132 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.2557 of 2023
in Crl.A.No.1132 of 2022

1. V.Prabhakaran
2. A.Arulkumar .. Petitioners

-VS-

The State represented by
The Inspector of Police
Annathanapatti Police Station
Salem District
(Crime No.829 of 2020) .. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence passed in S.C.No.312 of 2021 dated 26.09.2022 by the First Additional District and Sessions Court, Salem and enlarge the petitioners on bail, pending disposal of the appeal.

For Petitioners :: Mr.N.Manokaran

For Respondents :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

(Order of the Court was made by SUNDER MOHAN, J.)

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The petitioners were tried as Accused Nos.1 & 2 in S.C.No.312 of 2021 on the file of the learned First Additional District and Sessions Judge, Salem and they stand convicted and sentenced for the offence, as detailed below, vide the judgment dated 26.09.2022, which are ordered to run concurrently:

<i>Rank</i>	<i>Convicted under Section</i>	<i>Sentence</i>
A1 & A2	120(B) r/w 302 IPC	Life imprisonment plus fine of Rs.2000/- each, i/d to undergo one year simple imprisonment
A1 & A2	449 IPC	10 years R.I plus fine of Rs.5000/- each, i/d to undergo one year simple imprisonment
A1 & A2	302 r/w 34 IPC	Life imprisonment plus fine of Rs.5000/- each, i/d to undergo one year simple imprisonment

Pending the appeal, they have filed the present miscellaneous petition seeking to suspend the sentence and enlarge them on bail.

2. We have heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record.



3. It is the case of the prosecution that the deceased, after getting divorce from his wife, was living with his sister on the terrace portion of the house; that the accused had prior enmity with the deceased, since the deceased had developed illicit intimacy with the wife of the first accused; that due to the said fact, the accused, in order to do away with the deceased, went to his house on 06.05.2020 at about 2.00 a.m., and caused his death. It is the further case of the prosecution that P.W.1 saw the deceased lying with bloodstain injuries on the morning of 06.05.2020 at about 7.00 a.m., and informed the same to P.W.2. Thereafter, the accused were arrested and the first accused is said to have given extra-judicial confession to P.W.4, Village Administrative Officer.

4. The learned counsel appearing for the petitioners submitted that the confession said to have been given to P.W.4 cannot be voluntary, as it is the evidence of P.W.3 that the accused were taken to the police station on the night of 06.05.2020. Further P.W.6, who is said to have seen the accused coming down from the first floor of the house where the deceased was done away with, had given statement to the police three days after the alleged occurrence.



5. The learned Additional Public Prosecutor appearing for the respondent, opposing the grant of bail, submitted that the entire evidence is based on circumstances and the prosecution has established the circumstances beyond reasonable doubt against the accused.

6. It is seen from the evidence of P.W.4, Village Administrative Officer before whom the first accused is said to have given the confession, had admitted that the accused had not signed the confession statement given before her. That apart, as rightly contended by the learned counsel appearing for the petitioners, P.W.3 had admitted that even before the first accused is said to have given the extra-judicial confession, the accused were all taken to the police station and they were in police custody. Therefore, there is a doubt with regard to the voluntariness of the extra-judicial confession. Further, it is seen that P.W.6, who was examined by the prosecution to show that he saw the accused coming down from the first floor of the house, in the cross-examination, would admit that though the police were present on the next day morning at the scene of occurrence, he did not inform the police about his seeing the accused in the house of the deceased on the night of 06.05.2020. Further, he would also state that he gave a statement to the police three days after the alleged occurrence.



Therefore, his evidence also cannot be believed. The other witnesses, namely, P.Ws.5, 7, 8, 10 & 11, have all turned hostile. Since the circumstances have not been conclusively established by the prosecution, particularly having regard to the period of incarceration undergone by the petitioners, this Court is inclined to suspend the sentence imposed on them.

7. Accordingly, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the petitioners is suspended and they are granted bail on the following conditions:-

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom one should be a blood relative, each for a likesum, to the satisfaction of the learned Judicial Magistrate No.2, Salem.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank Pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they 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



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of the date of their absence, as directed by the trial Court.

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(S.S.S.R.,J.) (S.M.,J.)
17.10.2023

SS

To

1. The First Additional District & Sessions Judge, Salem
2. The Judicial Magistrate No.2, Salem
3. The Inspector of Police, Annathanapatti Police Station, Salem District
4. The Superintendent, Central Prison, Coimbatore
5. The Public Prosecutor, High Court, Madras



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AND
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