

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM :

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

Crl.M.P.Nos.953 & 4294 of 2023
in
Crl.A.Nos.80 & 320 of 2023

Gopal

.. Petitioner in
Crl.M.P.No.953 of 2023

Muniyappan

.. Petitioner in
Crl.M.P.No.4294 of 2023

Vs.

State rep. By
The Inspector of Police,
Kannankurichi Police Station,
Salem City.

.. Respondent
in both petitions

Criminal Miscellaneous Petitions filed under Section 389(1) Cr.P.C. to suspend the sentence passed by the II Additional District and Sessions Judge, Salem in S.C. No.53 of 2016 dated 13.12.2022 and to enlarge the petitioners on bail pending disposal of the criminal appeals.

For Petitioner : Mr.M.Mohamed Riyaz
for Ms.Z.Rifa Fathima
in Crl.M.P.No.953 of 2023

Mr.K.Sathish Kumar
in Crl.M.P.No.4294 of 2023

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor
(in both petitions)

COMMON ORDER

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

These Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed by the II Additional District and Sessions Judge, Salem in S.C. No.53 of 2016 dated 13.12.2022, and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

2. The learned II Additional District and Sessions Judge, Fast Salem in S.C. No.53 of 2016, has convicted and sentenced the petitioners/A2 and A4 as follows :

<i>Accused No.</i>	<i>Offence for which Convicted</i>	<i>Sentence</i>
A2	302 IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment
A4	302 r/w 34 IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment

3. Challenging the above conviction and sentence, the petitioners, who are arrayed as A2 and A4, have filed the above Criminal Appeals and they are seeking suspension of sentence and bail in the present miscellaneous petitions.

4. It is the case of the prosecution that the first accused is the cousin brother of the deceased and A2 to A4 are friends of the first accused; that the deceased Murugesan and the first accused were cultivating their share of land in the ancestral property at their village by drawing water from a common well; that there was a dispute between the first accused and the deceased in drawing water from the common well; that on 30.09.2014 at about 06.30 p.m., the first accused came to the house of the deceased and threatened him that

he would face dire consequences if he drew water from the common well; that on 06.10.2014 at about 07.30 p.m., all the accused were consuming liquor in a wine shop and the deceased was also consuming liquor in the same place and there was a wordy quarrel between the first accused and deceased; that A2 to A4 attempted to compromise both A1 and the deceased, the deceased abused them in filthy language; that A1 to A4 thereafter developed enmity against the deceased and decided to do away with the deceased; that accused A3 and A4 informed the deceased that they would solve the issue between A1 and the deceased; that after taking the deceased to neighbouring place, A3 and A4 caught hold of the hands of the deceased, A1 attacked the deceased on the backside of the head and caused multiple injuries and that A2 took a knife and made multiple cuts on the face of the deceased and the deceased succumbed to the said injuries.

5. Learned counsel for the petitioners submitted that several persons were examined as eye witnesses by the prosecution; that all of them turned hostile except P.W.1/wife of the deceased; that FIR said to have registered on 06.10.2014 reached Magistrate Court only

at 10.30 a.m. on 08.10.2014 and that the presence of P.W.1/wife of the deceased at the scene of occurrence is highly improbable.

6. Heard the learned Additional Public Prosecutor who vehemently opposed for grant of relief of suspension of sentence to the petitioners herein as there are specific overt acts against the petitioners herein. Further, the motive for committing the crime is also proved by the prosecution and that the prosecution has proved its case beyond reasonable doubt and hence prayed for dismissal of the petitions.

7. This Court finds that witnesses P.Ws.4 and 5 to 7 who were cited as eye witnesses turned hostile. P.W.5 is the cousin of the deceased. It is the version of P.W.1 that she was accompanied by P.W.5 when she went in search of her husband/deceased and found the accused attacking the deceased. However, P.W.5 would admit in his cross-examination that he went to the scene of occurrence after he came to know that the deceased was murdered. That apart, a reading of the evidence of P.W.1 would show that her presence at the scene of occurrence is also highly doubtful. Considering the period of

incarceration and considering the fact that the appeals are not likely to be taken up for hearing in the near future, we are inclined to suspend the sentence.

8. Accordingly, these Criminal Miscellaneous Petitions stand **allowed** and the sentence of imprisonment imposed on the petitioners is **suspended** and the petitioners are granted bail on the following conditions:

- (i) Each of the petitioner shall execute a bond for a sum of Rs.25,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate, No.IV, Salem.
- (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 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 Appeals
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 of the date
of their absence, as directed by the trial Court.

(S.S.S.R., J.) (S.M., J.)
30.10.2023

Index : Yes / No
Neutral Citation: Yes/No
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To

- 1.The II Additional District and Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.IV,
Salem.
- 3.The Inspector of Police,
Kannankurichi Police Station,
Salem District.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Public Prosecutor, High Court, Madras.

S.S. SUNDAR, J.

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