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Crl.M.P.No.2136 of 2023 in Crl.A.No.1144 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

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

Crl.M.P.No.2136 of 2023
in Crl.A.No.1144 of 2022

Nagarathinam @ Rathinasamy
S/o Nagaraj

.. Petitioner

-vs-

State by
Inspector of Police
Uthukuli Police Station
Tiruppur District
(Crime No.434 of 2018)

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed in S.C.No.123 of 2021 dated 23.08.2022 by the learned Principal Sessions Judge, Tiruppur and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner :: Mr.M.Muthappan

For Respondent :: 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 petitioner, who was tried as Accused No.3 in S.C.No.123 of 2021 on the file of the learned Principal Sessions Judge, Tiruppur, stands convicted for the offence under Sections 302, 342 r/w 346 and 201 r/w 302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for three months for the offence under Section 302 of IPC; to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo 3 months rigorous imprisonment for the offence under Section 342 r/w 346 of IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months for the offence under Section 201 r/w 302 of IPC, which are ordered to run concurrently, vide the judgment dated 23.08.2022 passed by the trial Court. Challenging the said conviction and sentence, the petitioner has filed the above appeal. The present miscellaneous petition has been filed to suspend the sentence and enlarge him on bail, pending the above appeal.

2. It is the case of the prosecution that the petitioner along with two others hatched a conspiracy to kidnap the deceased and thereafter demand



ransom from his father, who is running an oil mill. It is the further case of the prosecution that the deceased approached A1 to A3 to help him recover an amount from a person who was due to pay money. The prosecution case is that making use of the said request made by the deceased, the accused hatched a conspiracy as aforesaid.

3. The learned counsel for the petitioner submitted that the case based on circumstantial evidence has not been proved by the prosecution as against the petitioner. The prosecution relied upon the evidence of P.W.1 to show that the deceased was last seen with A1 to A3. The other witnesses have corroborated the evidence of P.W.1 as regards the last seen theory. There is no other circumstance against the petitioner and that the body of deceased was recovered from the house of A1.

4. The learned Additional Public Prosecutor, per contra, submitted that the petitioner is the friend of A1; that P.Ws.1 to 7 have seen the petitioner along with the deceased and therefore the prosecution has established the circumstances beyond reasonable doubt and prayed for dismissal of the petition.



5. On perusal of the records, we find that the body of the deceased was recovered from the house of A1. There is no recovery of any weapon or any article from A3 which would connect A3 with the crime. Admittedly, there is no motive alleged against A3. It is well settled that conviction cannot be based on the circumstance of last seen alone. In such circumstances, finding that the petitioner has got a fair chance of success in the appeal as against his conviction, we are inclined to suspend the sentence.

6. Accordingly, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the petitioner is suspended and he is granted bail on the following conditions:-

- (i) The petitioner 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, Avinashi.
- (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 petitioner 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



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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.

(S.S.S.R.,J.) (S.M.,J.)
11.12.2023

SS

To

1. The Principal Sessions Judge, Tiruppur, Tiruppur District
2. The Judicial Magistrate, Avinashi
3. The Inspector of Police, Uthukuli Police Station, Tiruppur District
4. The Superintendent, Central Prison, Coimbatore
5. The Public Prosecutor, High Court, Madras



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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

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