



WEB COPY



*Crl.M.P.No.2527 of 2023  
in Crl.A.No.487 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**  
and  
**THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

Crl.M.P.No.2527 of 2023

in

Crl.A.No.487 of 2021

Kumar

S/o.Govindaraj

.. Petitioner/Accused

Vs.

State rep. by

The Inspector of Police,

Chitlapakkam Police Station,

Chitlapakkam,Kancheepuram District.

(Crime No.698 of 2014)

.. Respondent

**PRAYER:** Criminal Miscellaneous Petition has been filed under Section 389 (1) & (3) of Cr.P.C to suspend the sentence imposed in Sessions Case No.291 of 2014 on the file of Principal Sessions Judge, Kancheepuram District at Chengalpet dated 05.09.2019 and enlarge the petitioner on bail pending disposal of the Criminal Appeal No.487 of 2021 on the file of this Court.

For Petitioner : Mr.T.Sivagnanasambanadan

For Respondent : Mr.A.Gokulakrishnan

Additional Public Prosecutor



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## **ORDER**

[Order of the Court was made by **R.SAKTHIVEL, J.**]

The petitioner herein, the appellant/sole accused in the main Criminal Appeal, has filed the Criminal Miscellaneous Petition praying to suspend the sentence of imprisonment passed by the Learned Principal Sessions Judge, Kanchipuram District at Chengalpattu (hereinafter referred to as Learned Sessions Judge for the sake of brevity) by Judgement dated 05.09.2019 made in Sessions Case No.291 of 2014 and enlarge him on bail pending disposal of the aforementioned Criminal Appeal.

2. The respondent/police registered a case under Section 302 of the 'Indian Penal Code (45 of 1860)' (hereinafter 'IPC') in which the petitioner was convicted and sentenced to undergo life imprisonment. The petitioner has been serving time since the date of judgement i.e., 05.09.2019. Feeling aggrieved with the conviction and sentence, the petitioner filed Criminal



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Appeal No.487 of 2021 along with the instant Criminal Miscellaneous  
Petition seeking suspension of sentence and bail.

3. Learned Counsel for the petitioner submitted that the petitioner has been incarcerated since 05.09.2019; that in this case, except P.W.3 the other private witnesses are hearsay witnesses and that P.W.3 who is the father of the petitioner, aged 78 at the time of occurrence, had deposed that he has vision impairment in both eyes and therefore, he could not have witnessed the alleged incident that took place at 11.00 p.m in the night. He further submitted that the Learned Sessions Judge convicted the petitioner solely based on the evidence of P.W.3 and hence, the petitioner has a fair chance of acquittal in the Criminal Appeal. Further he submitted that the petitioner is poor and the sole breadwinner of his family. Further he submitted that, P.W.3- the petitioner's father, died on 19.09.2023 and the petitioner has to perform some rituals for his late father. Hence, he prayed to allow the petition.



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4. Learned Additional Public Prosecutor submitted that the deceased is none other than the own brother of the petitioner; that the offence happened due to a property dispute between the deceased and the petitioner and that the Learned Sessions Judge after considering the materials and evidence on record carefully, concluded that the petitioner committed the offence of murder. Further submitted that if the petitioner is enlarged on bail, since the rituals are not yet completed, he may raise the property dispute once again during the rituals and cause trouble to the legal heirs of the deceased. Accordingly, he prayed to dismiss the petition.

5. This court has carefully considered the submissions made on either side and perused the case file. The learned Sessions Judge has convicted and sentenced the petitioner under section 302 I.P.C based on the evidence of P.W.3 and other witnesses. It's to be noted that P.W.3 is the sole eyewitness, aged 78 with visual impairment and that the incident took place



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at night 11.00 p.m. It is alleged by the petitioner that P.W.1, P.W.3 and P.W.4 are interested and hear-say witnesses. In these circumstances, the petitioner is highly likely to succeed in the Criminal Appeal. Needless to mention that the above observation is made only for the purpose of this petition. Further, the disposal of the Criminal Appeal is likely to take time. Considering the period of incarceration and the fact that the petitioner has to perform the rituals and the petitioner is poor and the sole breadwinner of his family, in the interest of justice, this court inclines to suspend the sentence of imprisonment.

6. Therefore, the substantive sentence of Imprisonment is alone suspended hereby and bail is granted subject to the following conditions.

(i) The petitioner shall execute a bond for Rs.10,000/- (Rupees Ten Thousand only) and furnish two sureties each for a like sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the Learned Sessions Judge.



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(ii) The petitioner shall appear and sign on every Monday and Friday at 10.30 a.m. before the Principal Sessions Court, Kanchipuram District at Chengalpattu until further orders. In case, the petitioner is unable to appear on the specified day, he's entitled to file a petition under section 317 of the Code of Criminal Procedure, 1973 and the Learned Sessions Judge shall decide the same on its own merits and as per law.

(iii) The petitioner shall not threaten the witnesses either directly or indirectly.

(iv) The petitioner shall not enter into the residence or workplace of the legal heirs of the deceased.

(v) The petitioner shall not claim property rights over the disputed property except by due process of law.

7. On breach of any of the aforementioned conditions, the Learned Sessions Judge is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions are imposed by



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themselves as laid down by the Hon'ble Supreme Court in *P.K.Shaji Vs. State of Kerala [(2005)13 SCC 283]*.

(M.S., J.) (R.S.V., J.)  
29.09.2023

Index : Yes

Speaking order

Neutral Citation : Yes

rsi

To

1.The Inspector of Police,  
Chitlapakkam Police Station,  
Chitlapakkam, Kancheepuram District.

2.The Principal Sessions Judge,  
Kancheepuram District at Chengalpet.

3.The Judicial Magistrate No.I,  
Tambaram.

4.The Superintendent,  
Central Prison, Puzhal,  
Chennai.

5.The Public Prosecutor,  
High Court, Madras.



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**and**  
**R.SAKTHIVEL, J.**  
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