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Crl.MP.No.2488/2023 in Crl.A.No.122/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.2488/2023 in Crl.A.No.122/2022

Viruthammal

.. Petitioner

Versus

State rep.by
The Inspector of Police
Kalavai Police Station
Krishnagiri District.

.. Respondent

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in SC.No.96/2018 dated 16.03.2021 on the file of the learned Additional Sessions Judge, Krishnagiri and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER



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[Order of the Court was made by SUNDER MOHAN, J]

- (1) This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 16.03.2021 passed in S.C.No.96/2018 on the file of the learned Additional Sessions Judge, Krishnagiri, and to enlarge the petitioner on bail pending disposal of the appeal.
- (2) The petitioner, who is arrayed as the 2nd accused in the above Sessions Case, was convicted under Sections 364 and 302 IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment for each of the offences.
- (3) Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and she is seeking suspension of sentence and bail in the present petition.
- (4) Heard the learned counsel for the petitioner [A2] and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.



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(5) The case of the prosecution is that the deceased is the husband of the petitioner herein [A2] and the first accused is the friend of the deceased.

The deceased suspected the fidelity of his wife [A2] and picked up quarrel with her on several occasions. Hence, the petitioner herein developed enmity over her husband and in order to do away with him, she sought the help of the 1st accused. On 24.02.2009, at about 02.30 hours, the petitioner herein, under the guise of offering prayers, abducted the deceased and A1 also joined them. Suddenly, the petitioner herein started quarreling with the deceased and she pushed the deceased down and strangulated him. Thereafter, both the accused had attacked the deceased with a granite stone, causing his death instantaneously.

(6) Though several grounds have been raised by the petitioner herein, the learned counsel for the petitioner submitted that the prosecution case is based on the circumstantial evidence and the main circumstance relied upon by the prosecution is the extra-judicial confession given by the petitioner herein to the Village Administrative Officer of Panamarathupatti Village [not examined] and the deceased was last seen in the company of the accused persons by P.W.4. Learned counsel



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further submitted that there was no necessity for the appellant to give a confession and hence, it is not voluntary ; that the Village Administrative Officer was not examined and that since the extra-judicial confession is a weak piece of evidence and the other circumstances have not been conclusively proved to connect the accused with the crime, the sentence imposed on the petitioner may be suspended. The learned counsel further submitted that the petitioner has been advised Hysterectomy as per the communication of the Medical Officer, Vellore Prison and recorded by this Court in the order dated 28.03.2023.

(7) Heard the learned Additional Public Prosecutor who vehemently opposed for grant of the relief of suspension of sentence to the petitioner herein as there are specific overt acts against the petitioner 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 petition.

(8) Considering the aforesaid facts and circumstances of the case and taking into consideration the fact that the appeal is not likely to be taken up for final hearing in the near future and that the petitioner is undergoing



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incarceration right from 16.03.2021, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to the petitioner herein.

(9) Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:

- (i) The petitioner shall surrender before the trial Court within 10 days from today and execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional Sessions Judge, Krishnagiri ;
- (ii) The petitioner and 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 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 if she is not able to appear before the trial Court on any day, she shall make arrangements to file an application under Section 317 Cr.P.C. and



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shall appear before the trial Court on any other day in lieu of the date of her absence, as directed by the trial Court.

[SSSRJ] [SMJ]
05.10.2023

AP

To

- 1.The Additional Sessions Judge
Krishnagiri.
- 2.The Inspector of Police,
Kalavai Police Station,
Krishnagiri.
- 3.The Superintendent of Prisons
Central Prison for Women, Vellore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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S.S.SUNDAR, J

and

SUNDER MOHAN, J

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