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Crl.M.P.No.3115 of 2023
in Crl.A.No.218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.No.3115 of 2023

in

Crl.A.No.218 of 2023

Vetrivel @ Kamaraj

... Petitioner

Vs.

State represented by
The Inspector of Police,
Kachirapalaiyam Police Station,
Kallakurichi.
Crime No.138 of 2019.

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence passed by the III Additional District and Sessions Judge, Kallakurichi, Kallakurichi District, in S.C.No.172 of 2019, dated 28.06.2022, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

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For Petitioner : Mr.T.Balachandran

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed by the III Additional District and Sessions Judge, Kallakurichi, Kallakurichi District, in S.C.No.172 of 2019, dated 28.06.2022, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2.The learned III Additional District and Sessions Judge, Kallakurichi, Kallakurichi District, in S.C.No.172 of 2019, has convicted and sentenced the petitioner/A2 as follows :

<i>Offence for which Convicted</i>	<i>Sentence</i>
Section 120(B) IPC	Life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.



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<i>Offence for which Convicted</i>	<i>Sentence</i>
Section 302 IPC	Life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.
Sentences were ordered to run concurrently	

3.Challenging the above conviction and sentence, the petitioner, who is arrayed as A2, has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present miscellaneous petition.

4.The case of the prosecution is that the deceased by name Venkatesan was approached by A1 and A2 seeking financial assistance. For the said purpose, A1 is said to have given the original document of his property to the deceased and a sum of Rs.50,000/- was lent to A1. There was some misunderstanding in this transaction and there was previous enmity between the accused persons and the deceased. As a consequence, A1 and A2 hatched a conspiracy and decided to do away with the deceased. In continuation to this conspiracy, A1 and A2 made the deceased accompany them on 25.03.2019 in a two wheeler and on 26.03.2019, the deceased was found dead near Gomugi river. There are totally two accused



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persons in this case and the petitioner is arrayed as A2.

5.Heard the learned counsel for the petitioner/A2 and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

6.It is now brought to the notice of this Court that the 1st accused had challenged the judgment of the trial Court in Crl.A.No.1121 of 2022 and this Court, by order dated 15.12.2022, in Crl.M.P.No.17220 of 2022 in Crl.A.No.1121 of 2022, suspended the sentence imposed on A1 and granted bail to A1.

7.Further, it is admitted that there is no eye-witness to the crime. The discrepancies pointed out by the co-ordinate Bench in the order passed in the petition filed by the 1st accused seeking suspension of sentence, are applicable to the 2nd accused also, as they stand on the same footing and as the grounds raised and the facts are similar and the conclusions are on appreciation of the same evidence. It is seen that the witness P.W.5 did not



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support the case of the prosecution and there is a snap in the chain and this vital lapse was not properly appreciated by the Court below. Therefore, this Court is unable to take a different view and no other circumstance is also pointed out by the learned Additional Public Prosecutor, for this Bench to take a different view. In this circumstances, this Court is inclined to suspend the sentence imposed by the trial Court on the petitioner/A2.

8. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A2 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/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned III Additional District and Sessions Judge, Kallakurichi, Kallakurichi District.
- (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 petitioner shall appear before the trial Court on the first working



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day of every month at 10.30 a.m. until the disposal of the Appeal and 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.)
06.10.2023

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Internet : Yes

Index : Yes / No

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- 1.The III Additional District and Sessions Judge,
Kallakurichi, Kallakurichi District.
- 2.The Inspector of Police,
Kachirapalaiyam Police Station,
Kallakurichi.
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

S.S. SUNDAR, J.



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