



CrI.MP.No.3021 of 2023
in CrI.A.No.1123 of 2022

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

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in CrI.A.No.1123 of 2022

1. Thangamani
2. Mrs.Shanthi
3. Mrs.Panchavarnam ... Petitioners/Accused Nos.1 to 3

Vs.

State Rep. by
The Inspector of Police,
Vikramangalam Police Station,
Ariyalur District.
Cr.No.324/2020. ... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned Principal District and Sessions Judge at Ariyalur, dated 01.09.2022 in S.C.No.43 of 2021 and enlarge the petitioners on bail pending disposal of the above appeal.



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For Petitioners : Mr.S.Ananthanarayanan
for Mr.K.Balu.
For Respondent : 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 imposed on the petitioners / Accused 1 to 3 respectively, by the learned Principal District and Sessions Judge, Ariyalur in S.C.No.43 of 2021, by the judgment dated 01.09.2022, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned Principal District and Sessions Judge, Ariyalur in S.C.No.43 of 2021, convicted all the accused/petitioners herein for the offence under Section 302 IPC and sentenced each of them to under life imprisonment and to pay a fine of Rs.10,000/- each, in default to undergo two years rigorous imprisonment.

3.Challenging the above conviction and sentence, the petitioners, who



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are arrayed as A1 to A3, have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

4. The case of the prosecution is that the deceased Swaminathan had two wives by name Sivapakkiyam and Panjavarnam (A3). The deceased had two sons and one daughter through his 1st wife-Sivapakkiyam and he had one son by name Thangamani (A1) through his 2nd wife-Panchavarnam (A3). The A2-Santhi is the wife of the A1-Thangamani and A3-Panchavarnam is the mother of the A1-Thangamani.

5. The further case of the prosecution is that the deceased Swaminathan has settled his properties in equal proportion to all his three sons i.e. one acre to each of the sons; that the deceased kept the remaining one acre for himself; that subsequently, he settled the remaining one acre to his grandson born through A1 and daughter-in-law (A2); that Dharmaraj, the other son of the deceased and first wife of the deceased, filed a civil suit before the civil Court questioning the settlement; that Thangamani (A1) was cultivating 40 cents of 'manyam' land which was earlier cultivated by the deceased; that due to this, there was enmity between the two families i.e. the



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family of first wife and the 2nd wife of the deceased; that on 19.07.2020 at 9.00 hours, Dharmaraj prevented A1, when he was trying to plough the land and told him that he had also share in the said land; that regarding this dispute, two families were fighting with each other; and that on 20.07.2020 at early hours, all the three accused murdered the deceased who is none other than the father of A1, father-in-law of A2 and the husband of the A3.

6. Mr.S.Ananthanarayanan, the learned senior counsel for the petitioners submitted that PW1- defacto complainant is none else than the daughter through the first wife of the deceased; that her evidence was only about the dispute between the two families and since she did not support the case of the prosecution, she was treated as hostile; that PW2 is none other than the son of the deceased through the first wife and that none of the witnesses have witnessed the crime. The learned counsel further submitted that the conviction was based on circumstantial evidence and the petitioners are undergoing incarceration since 01.09.2022; that the prosecution had not proved the circumstances against the accused and therefore, prayed to suspend the sentence imposed on the petitioners.



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7. Heard the learned Additional Public Prosecutor who vehemently opposed for grant of the relief of suspension of sentence to the petitioners herein as there are overwhelming evidence against the petitioners herein; that the prosecution has proved its case beyond reasonable doubt and hence, prayed for dismissal of the petition.

8. The prosecution is based on circumstantial evidence. Apart from the motive alleged by the prosecution, the other circumstances relied upon by the prosecution is the recovery of the bloodstained clothes of the accused and the weapon viz. Bill Hook, seized on the confession of the A1. This Court finds that the alleged motive has not been conclusively established by the prosecution. PW1 examined to prove the motive turned hostile. The other witnesses are hearsay witnesses and are of no avail to the prosecution. The petitioners are undergoing incarceration from 01.09.2022.

9. Considering the above said circumstances, this Court is of the view that the petitioners have made out a case for suspension of sentence.



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10. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioners (A1 to A3) is suspended on the following conditions:

- (i) The petitioners 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 Principal District and Sessions Judge at Ariyalur;
- (ii) The petitioners 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;
- (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 appeal 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



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To

- 1.The Principal District and Sessions Judge,
Ariyalur.
- 2.The The Inspector of Police,
Vikramangalam Police Station,
Ariyalur District.
- 3.The Superintendent,
Central Prison,
Trichy.
- 4.The Public Prosecutor,
High Court, Madras.



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