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Crl.M.P.No.2525 of 2023 in Crl.A.No.405 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

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

Crl.M.P.No.2525 of 2023
in Crl.A.No.405 of 2020

Lakshmipathy
S/o Rajendran

.. Petitioner

-vs-

The Inspector of Police
T-6 Avadi Police Station
Thiruvallur District
(Crime No.852 of 2015)

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed in S.C.No.141 of 2016 dated 13.02.2020 passed by the III Additional Sessions Judge, Poonamallee and enlarge the petitioner on bail, pending disposal of the appeal.

(Prayer amended vide order of Court dated 19.10.2023 in Crl.M.P.No.17012 of 2023 in Crl.A.No.405 of 2020)

For Petitioner :: Mr.R.Sankarasubbu

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

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

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The petitioner/A2 along with A1 has filed the appeal challenging the conviction and sentence imposed by the learned III Additional Sessions Judge, Poonamallee vide judgment dated 13.02.2020 passed in S.C.No.141 of 2016 directing each of them to undergo life imprisonment and also to pay a fine of Rs.7,000/-, in default to undergo rigorous imprisonment for a period of six months for the offence under Section 302 read with 34 of IPC; to undergo simple imprisonment for one month for the offence under Section 341 of IPC, which are ordered to run concurrently. However, pending the appeal, the petitioner/A2 has filed the present miscellaneous petition seeking to suspend the sentence and enlarge him on bail.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record.

3. It is the case of the prosecution that the deceased and the accused had prior enmity. It is stated that the deceased, who had borrowed a sum of Rs.10,000/- from the accused persons, failed to repay the outstanding



amount and therefore the accused have taken away the Scorpio car of the deceased by saying that they would return the vehicle on payment of dues by the deceased. It is the further case of the prosecution that on the date of occurrence, i.e., 12.07.2015, at midnight, the first accused called the deceased over phone and informed the deceased to come to his house to speak about the Scorpio car. When the deceased went along with Sridhar to the house of the first accused, the accused was not available and the deceased was speaking to the wife of the first accused and his mother. The case of the prosecution is that at that time, around 10.00 p.m., the accused persons with an intention to commit the murder of the deceased, came in a motorcycle with billhooks and the first accused stabbed the deceased on his stomach and the second accused slashed upon the deceased head. When the deceased started running towards Kamaraj Nagar Main Road, he fell down and at that time, the accused persons, while chasing the deceased, slashed the deceased indiscriminately upon face, head, shoulder and as a result of serious injuries inflicted by the accused, the prosecution registered a case against the accused under Section 302 readwith 34 of IPC and that they were convicted and sentenced to undergo life imprisonment by the trial Court.

4. We have gone through the evidence let in on the side of the



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prosecution. P.W.1 is the father of the deceased. P.W.2 is the wife of the deceased. P.W.3 is a crucial witness who has witnessed the occurrence.

During cross examination, P.W.3 has clearly deposed that he gave evidence on the basis of newspaper news where the occurrence was reported. He has also stated that he was examined on the next day of occurrence. P.W.4, though is a crucial witness who has also suffered injuries along with the deceased, admits even in chief examination that he does not know anyone of the accused and he was unable to identify anyone of the accused. There is no identification parade arranged to identify the accused so as to believe the evidence of P.W.4. Therefore, except the evidence of P.W.3, no one had witnessed the crime and his version during cross examination also shows that he had deposed after seeing the newspaper news, which raises a doubt as to the veracity of his statement in the chief examination. No other witness has corroborated the evidence of P.W.3. P.W.4 is an injured witness, who was also attacked by the accused. However, he was unable to identify anyone of the accused, as he has not seen any of the accused earlier. He has not named any of the accused during his chief examination as to the overtacts committed by the accused in that order. In such circumstances, the evidence of P.W.4 also does not inspire confidence.

However, the present application is filed by the second accused only, who is



alleged to have accompanied the first accused in the commission of crime.

There is no motive for the second accused to commit the murder. Apart from that, the second accused is in jail from 10.02.2020. Taking into consideration the period of incarceration undergone by the second accused and that no specific overtact is attributed against the second accused, this Court is inclined to suspend the sentence imposed on the petitioner/A2.

5. 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 III Additional Sessions Judge, Poonamallee.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge 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 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



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date of his absence, as directed by the trial Court.

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(S.S.S.R.,J.) (S.M.,J.)
19.10.2023

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SS

To

1. The III Additional Sessions Judge, Poonamallee
2. The Inspector of Police, T-6, Avadi Police Station, Thiruvallur District
3. The Superintendent, Central Prison, Cuddalore
4. The Public Prosecutor, High Court, Madras



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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

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