



Crl.M.P.No.2728 of 2023
in Crl.A.No.202 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

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

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in
Crl.A.No.202 of 2021

1.Majaas Bhai @ Majaas @ Mohammed Majaasudeen
2.Sahayu
3.Manikandan

... Petitioners

Vs.

The State rep. by
The Inspector of Police,
G-1 Vepery Police Station,
Vepery, Chennai.

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C.
to suspend the sentences of imprisonment inflicted upon the
petitioners herein vide judgment of conviction pronounced in S.C.
No.175 of 2017 by the learned VI Additional Sessions Judge at Chennai
dated 03.02.2021 and to enlarge the petitioners on bail pending
disposal of the Criminal Appeal.



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For Petitioners : Mr.G.Prabhakaran

For Respondent : Mr.S.Rajakumar,
Additional Public Prosecutor

ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the VI Additional Sessions Judge, Chennai in S.C. No.175 of 2017 dated 03.02.2021, and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

2. The learned VI Additional Sessions Judge, Chennai in S.C. No.175 of 2017 has convicted and sentenced the petitioners/A2, A3 and A5 as follows:

<i>Offence for which Convicted</i>	<i>Sentence</i>
302 r/w 149 IPC	Life imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo one year rigorous imprisonment each



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3. Challenging the above conviction and sentence, the petitioners, who are arrayed as A2, A3 and A5, have filed the above Criminal Appeal and they are seeking suspension of sentence and bail in the present miscellaneous petition.

4. The case of the prosecution is that the first accused and the deceased Balamurugan are relatives and there is a civil dispute with regard to an immovable property; that the first accused engaged the services of A2 to A8; that pursuant to the same, A2 to A8 waylaid the deceased on 30.04.2016 at about 12.00 noon and indiscriminately attacked him with a cricket bat resulting in the death of the deceased.

5. Learned counsel for the petitioners submitted that it is the case of the prosecution that A4 alone inflicted a fatal blow with the cricket bat and the other accused were members of the unlawful assembly; that this Court suspended the sentence of imprisonment and released A7 and A8 on bail vide order dated 24.11.2021 in Crl.M.P. No.11900 of 2021 in Crl.A.No.202 of 2021; that A6, who is said to have kicked the deceased and whose overt act is similar to that of the overt act alleged against A5, has been released on bail and his



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sentence of imprisonment was suspended by this Court by order dated 22.04.2022 in Crl.M.P.No.5203 of 2022 in Crl. A. No.202 of 2021; that A2 and A3 who are petitioners 1 and 2 in the instant petition were roped in only on the basis of the confession said to have been given by the co-accused and there is no acceptable evidence to implicate the first two petitioners viz., A2 and A3 and that though earlier bail application was dismissed by this Court, the petitioners are in incarceration for nearly 2 ½ years and since the appeal is not likely to be taken in the near future for final hearing, he seeks suspension of sentence.

6. Learned Additional Public Prosecutor per contra submitted that the trial Court after considering the evidence on record rightly convicted the accused and prayed for dismissal of the petition.

7. Considering the fact that A6 whose overt act is similar to that of A5 has been released on bail by this Court vide order dated 22.04.2022, this Court finds that on parity A5 is also entitled to suspension of sentence. As Regards A2 and A3/petitioners 1 and 2, this Court finds the only evidence relied upon by the prosecution is the



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confession of the co-accused. Considering the above facts and the period of incarceration from 03.02.2021, this Court is inclined to suspend the sentence.

8. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of imprisonment imposed on the petitioners is **suspended** and they are granted bail on the following conditions:

- (i) Each of the petitioner 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 VI Additional Sessions Judge, Chennai.
- (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 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



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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.)
07.11.2023

Index : Yes / No
Neutral Citation: Yes/No
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To

- 1.The Inspector of Police,
G-1 Vepery Police Station,
Vepery, Chennai.
- 2.The VI Additional Sessions Judge,
Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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