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CrI.MP.No.8246 of 2023
in CrI.A.No.197 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.MP.No.8246 of 2023
in CrI.A.No.197 of 2021

1. Mecherri @ Sevvathan
2. Sakthivel ... Petitioners/A2 & A3

Vs.

State Rep. by
The Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri District.
Cr.No.778/2017. ... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 82469 (1) of Cr.P.C. to suspend the sentence imposed by the learned Additional Sessions Judge, Krishnagiri, dated 23.02.2021 in S.C.No.30 of 2019 and enlarge the petitioners on bail pending disposal of the above appeal.

For Petitioners : Mr.R.Sankarasubbu
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.C.Aravind



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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/A2 & A3, by the learned Additional Sessions Judge, Krishnagiri in S.C.No.30 of 2019, by the judgment dated 23.02.2021, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned Additional Sessions Judge, Krishnagiri in S.C.No.30 of 2019, convicted the petitioners herein/A2 & A3 for the offence under Sections 120 (B), 302 and Section 201 r/w 302 of IPC and sentenced them as follows:

Accused No.	Offence under Section	Sentence imposed
A2 & A3	120(B)	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.
	302 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.
	201 r/w 302 IPC	Each of them to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.



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The period of sentences imposed above are directed to run concurrently.

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3.Challenging the above conviction and sentence, the petitioners /A2 & A3, have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.R.Sankarasubbu, learned Counsel appearing for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that A1 and the deceased one Krishna loved each other; that when they both wanted to get married, A1's parents did not permit the marriage; that A1 thereafter, got married to one Murali around 14 years, prior to the occurrence; that the deceased Krishna continued his illicit intimacy with A1, even after her marriage; that the deceased thereafter harassed, blackmailed and tortured her for money; that on account of the same, A1 decided to do away with the deceased with the help of A2 and A3; that on 06.02.2017 that about 2PM, at the house of A2 a conspiracy meeting was held between A1 to A3; that on 09.12.2017



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morning the petitioners/A2 & A3 attacked the deceased with aruval and knife and the deceased was beheaded.

6. The learned counsel for the petitioners submitted that the case is based on circumstantial evidence and except for the circumstance of last seen, there is no other circumstance to establish the involvement of the petitioners; that PW7 and PW8 are the witnesses examined by the prosecution to prove the said circumstance; that both PW7 and PW8 cannot be believed because they have admitted in the cross examination that when they were examined on 10.12.2017 one day after the occurrence, they did not tell the police about their seeing the deceased with the accused; that only on 13.12.2017, after seeing the newspaper, they have informed the police and therefore, the conviction based on their evidence is unsustainable.

7. The learned counsel for the petitioners further pointed out that the A1 was granted bail by this Court in CrI.M.P.No.6628 of 2021 on 18.10.2021. The learned counsel also submitted that though bail application was dismissed on earlier occasions considering the involvement of the



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petitioner and the fact that the petitioners are in jail since 23.02.2021 i.e., for nearly two years and 9 months, the sentence imposed on the petitioners/A2 & A3, may be suspended.

8. The learned Additional Public Prosecutor per contra submitted that it is a case of gruesome murder and the earlier Bench of this Court had dismissed the bail applications and there is no change in circumstances.

9. We find that the primary circumstance relied upon by the prosecution is the fact that the deceased was last seen in the company of the petitioners. PW7 and PW8 are the witnesses examined by the prosecution. We have carefully examined their evidence and we find that PW7 and PW8 have not informed the police about their seeing the deceased and the accused together, when they were first examined by the police on 10.12.2017. It is their version that only on seeing the newspaper later, they informed the police on 13.12.2017.

10. Therefore, though the earlier bail applications of the petitioners were dismissed, considering the *prima facie* case and the fact that the



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petitioners are in custody from 23.02.2021 and the appeal is not likely to be taken up in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioners herein/A2 & A3.



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11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioners (A2 and 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 Additional Sessions Judge, Krishnagiri;
- (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.)

06.11.2023

ars

Internet : Yes

Index : Yes / No



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Note to office:

Upload the order copy forthwith
Issue order copy by 08.11.2023

To

- 1.The Additional Sessions Judge,
Krishnagiri.
- 2.The Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.



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