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CrI.MP.No.7574 of 2023  
in CrI.A.No.208 of 2021

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**

**CrI.MP.No.7574 of 2023**  
**in CrI.A.No.208 of 2021**

Viji @ Vijayakumar

... Petitioner/A1

Vs.

State Rep. by

The Inspector of Police,  
Thakkolam Police Station,  
Arakkonam Taluk,  
Ranipet District.  
Cr.No.297/2013.

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned II Additional District and Sessions Judge, Vellore @ Ranipet, dated 26.03.2021 in S.C.No.202 of 2015 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.M.R.Thangavel

For Respondent : Mr.A.Gokulakrishnan

Additional Public Prosecutor

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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 petitioner/A1, by the learned II Additional District and Sessions Judge, Vellore @ Ranipet in S.C.No.202 of 2015, by the judgment dated 26.03.2021, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned II Additional District and Sessions Judge, Vellore @ Ranipet in S.C.No.202 of 2015, convicted the petitioner herein/A1 for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

3.Challenging the above conviction and sentence, the petitioner, who was arrayed as A1, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.



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4.Heard Mr.M.R.Thangavel, learned Counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the petitioner herein/A1 and A2 are friends; that a relative of A2 by name Mahesh was earlier murdered by one Umalenin; that there was enmity between the family of A2 and the said Umalenin; that one week prior to the occurrence, PW2 was in conversation in public bus journey with Umalenin and the same was informed to A2 by some unknown person; that therefore, A2 who was allegedly upset with the above conduct of PW2 went along with his friend-A1/petitioner herein to the defacto complainant's house on 29.12.2013 at 9.30pm and caused injury to PW2 and the deceased-Narayanan/father of PW2; that due to injury, in due course of treatment, the deceased died on 14.01.2014; that a case under Sections 294 (b), 324, 506 (ii) IPC was registered and the same was later altered to 302 IPC.



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6. The learned counsel for the petitioner submitted that the petitioner/A1 was acquitted of charges under Section 307 r/w 34 IPC, since there was no evidence and both PW1 and PW2 had not spoken about the involvement of the petitioner/A1 in the offence under Section 307 IPC; that PW1, who claimed to be an eyewitness had stated in the FIR that he came to know that somebody had attacked his father (deceased) and his brother (PW2); that A1 had no motive to commit the alleged crime and he was implicated as an afterthought by PW1; that the prosecution had suppressed the Accident Register of the deceased and the treatment given to the deceased from the date of occurrence till his death. The learned counsel further submitted that the petitioner is undergoing incarceration from 26.03.2021 and therefore, prayed to suspend the sentence imposed on the petitioner/A1.

7. The learned Additional Public Prosecutor submitted that PW2 is an injured eyewitness who has spoken about the involvement of the petitioner/A1 and therefore, there is no reason to disbelieve his testimony and the trial court after considering all the evidence adduced on the side of



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the prosecution had rightly convicted the appellant for the offence under Section 302 IPC. The respondent has also filed the counter opposing the prayer for suspension of sentence.

8. Admittedly, the deceased died 16 days after the occurrence. PW1 though had claimed to be an eyewitness has stated in the FIR that he came to know about the occurrence later. However, in his deposition before the trial Court, he had stated that he had witnessed the occurrence which is a material improvement and makes him unreliable.

9. Considering the aforesaid circumstances coupled with the nature of injuries alleged to have been caused by the petitioner, this Court is of the view that it cannot be said that the petitioner/A1 had intention or knowledge to commit the offence under Section 302 IPC and thus, the petitioner/A1 has made out a case for suspension of sentence. Further, the petitioner is undergoing incarceration from 26.03.2021 and that the appeal is not likely to be taken up for hearing in the near future. Hence, this Court is inclined to Suspend the Sentence imposed on the petitioner herein/A1.



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10. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A1 is suspended 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 II Additional District and Sessions Judge, Vellore @ Ranipet;
- (ii) The petitioner 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 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 date of his absence, as directed by the trial Court.

(S.S.S.R., J.)      (S.M., J.)  
30.10.2023



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ars

Internet : Yes

Index : Yes / No

**Note to office:**

**Upload the order copy forthwith**



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To

- 1.The II Additional District and Sessions Judge,  
Vellore @ Ranipet.
- 2.The The Inspector of Police,  
Thakkolam Police Station, Arakkonam Taluk, Ranipet District.
- 3.The Superintendent,  
Central Prison, Vellore.
- 4.The Public Prosecutor,  
High Court, Madras.



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**S.S. SUNDAR, J.**  
**and**  
**SUNDER MOHAN, J.**

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