



Crl.MP.No.5029/2023 in Crl.A.No.1237/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.5029/2023 in Crl.A.No.1237/2022

Vellaiyan Venkatesh @ Kumaravel

.. Petitioner / A4

Versus

State through
The Inspector of Police
Mallur Police station
Crime No.42/2020

.. Respondent

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed by the learned I Additional District and Sessions Judge, Salem in SC.No.49/2021 dated 12.07.2022 and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner	:	Mr.R.Marudhachalamurthy
For Respondent	:	Mr.A.Gokulakrishnan Additional Public Prosecutor



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ORDER

[Order of the Court was made by S.S.SUNDAR, J]

- (1)The above criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgment dated 12.07.2022 passed in S.C.No.49/2021 on the file of the learned I Additional District and Sessions Judge, Salem, and to enlarge the petitioner on bail pending disposal of the appeal.
- (2)The petitioner is arrayed as A4 out of 7 accused. The petitioner was convicted and sentenced in the above Sessions Case as follows:-

<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Sentence imposed</i>
A4	147 IPC	To undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment.
	341 IPC	To pay a fine of Rs.500/-, in default to undergo one week simple imprisonment.
	302 r/w 149 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment.

- (3)The case of the prosecution is that A1 and A2 are brothers. A3 and



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another accused who is a juvenile, are the sons of junior paternal uncle of A1 and A2. A4 to A7 are the friends of A1 and A2. The deceased is the brother of PW1. Both PW1 and deceased were running a Car Mechanic shop in the name and style as "A.K.Maruti Auto Centre". It appears that the cousin brother of the deceased, namely, PW6-Srinath @ Dineshkumar, had love affair with one Aruna and that, A2 had also sent a love proposal to the said Aruna through a Message. When Aruna informed PW6 about the act of A2, PW6 along with his friend Prakash [PW7] went to the house of A2 and questioned A2. At that time, A1 to A3 assaulted PW6. PW6, in turn, informed the deceased about the occurrence. When the deceased questioned A1, there started enmity between them. While so, on 28.02.2020, at about 11.15 p.m. when the deceased was coming in a motor cycle bearing Regn.No.TN-90-A-9041 along with one Ayyanar, the accused came there along with a juvenile accused armed with lethal weapons like knives, Aruval etc., and started attacking the deceased, resulting in the death of the deceased instantaneously. Hence, the case.



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(4) Heard the learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

(5) The learned counsel for the petitioner would contend that the prosecution has not proved its case beyond reasonable doubt and the same suffers from serious infirmities and inconsistencies. The learned counsel would put forth the following contentions:-

[a] The Trial Court convicted the petitioner/A4 only on account of his presence in the scene of crime.

[b] Even according to the case of the prosecution, the only overt act alleged against the petitioner herein, is that he punctured the motorcycle of the deceased and that he has not attributed any grievous injuries on the deceased.

[c] There are no prosecution witnesses in this case to connect the petitioner with the alleged assault/attack on the deceased.

[d] At the most, the petitioner can be convicted only for the offence of "member of unlawful assembly" and not for the offence under Section 302 r/w 149 IPC.



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In the above circumstances, they pray for the grant of the relief of suspension of sentence to the petitioners herein.

(6) Per contra, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor contended that the prosecution has established its case beyond all reasonable doubts and the minor discrepancies found in the evidence of the prosecution witnesses will not affect the prosecution case in its entirety. The presence of the petitioner as a member of unlawful assembly is proved and hence, he would submit that it is not a fit case to grant the relief sought for.

(7) The Trial Court had taken note of the fact that the petitioner was present in the scene of occurrence. However, even according to the finding of the Trial Court, the petitioner had only punctured the tyre of the motorcycle of the deceased and had not inflicted any injury on the deceased. According to the findings of the Trial Court, the petitioner has been shown as a member of unlawful assembly whose common object was to cause the death of the deceased. Though it is alleged that there was unlawful assembly with the common object to cause the death of the deceased, this Court is unable to find any iota of evidence to suggest that



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the intention of the members who gathered on the date of occurrence, was to commit heinous crime of murder. It is seen that the petitioner is in custody from 12.07.2022.

(8)Considering the aforesaid facts and circumstances of the case and taking into consideration the fact that there is no specific overt act against the petitioner and taking into consideration the period of incarceration of the petitioner and further that the appeal is not likely to be taken up for final hearing in the near future and that the petitioners are undergoing incarceration right from 23.08.2022, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to the petitioner herein.

(9)Accordingly, the criminal miscellaneous petitions stand **allowed** and the sentence of imprisonment of the petitioners is **suspended** on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.VI,



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Salem;

- (ii) The petitioner and the sureties shall affix his photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of his Aadhar card or Bank Pass Book and mobile number 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 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.

[SSSRJ] [SMJ]
11.10.2023

AP



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To

- 1.The I Additional District Sessions Judge
Salem.
- 2.The Judicial Magistrate No.VI,
Salem.
- 3.The Inspector of Police
Mallur Police Station,
Salem District.
- 4.The Superintendent of Prisons
Central Prison, Salem.
- 5.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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S.S.SUNDAR, J

and

SUNDER MOHAN, J

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