



Crl.MP.No.7470 of 2023
in Crl.A.No.571 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2023

PRONOUNCED ON : 20.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.7470 of 2023
in Crl.A.No.571 of 2023

Selvakumar

... Petitioner/A1

Vs.

State Rep. by

The Inspector of Police,
V.Kalathur Police Station,
Perambalur District.

Cr.No.16/2016.

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases at Chennai dated 17.02.2022 in S.C.No.2 of 2017 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.S.Xavier Felix
For Respondent : Mr.A.Gokulakrishnan

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Additional Public Prosecutor

ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A1, by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases at Chennai in S.C.No.2 of 2017, by the judgment dated 17.02.2022, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases at Chennai, in S.C.No.2 of 2017, convicted the petitioner herein/A1 for the offence under Sections 102-B and 302 r/w 120-B of IPC and sentenced as follows:

Sl.No.	Offence under Section	Sentence imposed
1	120-B of IPC	To undergo life imprisonment and also to pay a fine of Rs.10,000/- in default to undergo four years SI.
2	302 r/w 120-B	To undergo life imprisonment and also to pay a fine of Rs.10,000/- in default to undergo four years SI.



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The sentences are directed to run concurrently.

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

4. The case of the prosecution is that the petitioner/A1 is the son of the deceased-Muthammal; that PW5 and one Ganesan are the other sons of the deceased; A2 is the son of petitioner/A1; that the deceased had settled the property which was cultivated by the petitioner/A1 in favour of the other sons; that the petitioner/A1 enraged by the said act decided to do away with the deceased; that A1 bought explosives from A4; that A1 and A2 made a parcel bomb in the shape of a box; that A2 carried the parcel bomb in a two-wheeler ridden by A3 and planted it outside the house of the deceased on 21.01.2016, at about 15.00 hours; that thereafter, the deceased opened the box and the parcel bomb exploded causing multiple injuries and that she succumbed to the injuries on the next day i.e. on 22.01.2016 at about 11.15 hours.



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5. (a) The learned counsel for the petitioner submitted that all the accused except the petitioner/A1 were acquitted. Though the petitioner was charged for the offence under Section 120-B IPC, Sections 3 and 4 of the Explosive Substances Act and Section 302 r/w 120-B IPC, the trial Court acquitted the petitioner of the offence under Sections 3 and 4 of the Explosive Substances Act. The trial Court found the petitioner guilty of offences under Section 120-B and 302 r/w 120-B of IPC.

(b) The learned counsel submitted that none of the witnesses examined by the prosecution has spoken about the alleged motive. PW2 to PW6, who were the relatives of the deceased and accused, turned hostile. Likewise PW8 and PW9 turned hostile.

(c) The learned counsel pointed out that it is not the case of the prosecution that the petitioner had any overt act in the alleged occurrence; that the case of the prosecution is that the petitioner/A1 conspired to commit the offence, which is based on circumstantial evidence; that motive has not



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been established and since all the other accused have been acquitted, the charge of conspiracy against A1 alone cannot be sustained; that there is no other evidence, except for recoveries of certain material objects i.e. yellow wire, from the scene of occurrence, which is said to have matched with the wire seized from the home of the accused. Learned counsel submitted that the seizures from the house of A1, cannot be believed. He further submitted that the accused is in custody since 17.02.2022 and prayed to suspend the sentence imposed on the petitioner.

6. The learned Additional Public Prosecutor submitted that the case is based on circumstantial evidence; that the prosecution has proved the case beyond reasonable doubt; that there is no reason to disbelieve the recoveries, connecting the petitioner/A1 with the crime; and thus prayed for dismissal of this petition.

7. We have carefully considered the submissions made by the learned counsel for the petitioner/A1 and the learned Additional Public Prosecutor. Admittedly, the trial Court had acquitted all the other accused of all the



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charges. The petitioner/A1 alone was convicted for the offence under Sections 120-B and 302 r/w 120-B IPC. It is not known as to why two charges were framed for the offence of conspiracy. That apart there cannot be a conspiracy by A1 alone. The learned Sessions Judge had observed that two other persons (who were not named as accused), had helped A1 to achieve the object of conspiracy. We are of the view that such an inference cannot be made firstly because it is contrary to the prosecution case. Secondly, it is not for the Court to assume a different case which is not borne out by the evidence on record.

8. Be that as it may, it is the case of the prosecution that the petitioner was not the person, who planted the bomb. The witnesses, who were cited by the prosecution viz., PW2 to PW6, PW8 and PW9, turned hostile. The other witnesses are official witnesses, whose evidence alone is of no avail to the prosecution case. The petitioner has also been acquitted of the charges under Sections 3 and 4 of the Explosive Substances Act. Thus, we find that the circumstances have not been conclusively established by the prosecution and the petitioner/A1 has a fair chance of success in the appeal.



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9. Therefore, considering the above fact and the fact that the petitioner is in custody from 17.02.2022 and that the appeal is not likely to be taken up for hearing in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioner herein.

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 Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases at Chennai;
- (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.



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(S.S.S.R., J.) (S.M., J.)
20.11.2023

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Internet : Yes

Index : Yes / No

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

ars

To

- 1.The Sessions Judge,
Sessions Court for Exclusive Trial of Bomb Blast Cases,
Chennai.
- 2.The Inspector of Police,
V.Kalathur Police Station,
Perambalur District.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
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