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Crl.M.P.No.6279 of 2023
in Crl.A.No.402 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

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

Crl.M.P.No.6279 of 2023
in
Crl.A.No.402 of 2022

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... Petitioner

Vs.

State by
The Inspector of Police,
Kattumannarkovil Police Station,
Cuddalore District.

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed in S.C. No.341 of 2018 dated 22.03.2022 by the learned II Additional District and Sessions Court, Chidambaram, Cuddalore District and release the petitioner on bail till the disposal of the appeal.

For Petitioner : Mr.Muthamizh Selvakumar
for Mr.P.Pugalenthi

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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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 II Additional District and Sessions Judge, Chidambaram in S.C. No.341 of 2018 dated 22.03.2022, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. The learned II Additional District and Sessions Judge, Chidambaram in S.C. No.341 of 2018, has convicted and sentenced the petitioner/accused as follows:

<i>Offence for which Convicted</i>	<i>Sentence</i>
302 IPC	Life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months rigorous imprisonment

3. Challenging the above conviction and sentence, the petitioner, who is the sole accused, has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present miscellaneous petition.



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4.The case of the prosecution is that the deceased and petitioner/accused were close friends; that the wife of the petitioner/accused had illicit intimacy with the deceased and enraged by the said conduct of the deceased, on 15.06.2018 at about 03.00 p.m., the petitioner with the intention to cause murder of the deceased came to the house of the deceased along with two liquor bottles and made the deceased consume liquor and while the deceased was lying in the bed, the accused cut the neck of the deceased with a sickle (aruval) and caused the death of the deceased.

5. Learned counsel for the petitioner submitted that the case rests on circumstantial evidence and the prosecution has not established the circumstances conclusively. The motive has not been established as P.W.15 wife of the petitioner/accused turned hostile. P.W.7 who is said to have last seen the deceased along with the accused is a chance witness and his version is highly improbable; that it is the prosecution case that PW7 was riding a bike when he last saw the deceased. However, in the cross examination he had admitted that he was affected with polio and cannot ride a bike and that there are no



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other circumstances and therefore the judgment of conviction is not sustainable and prayed for suspension of sentence.

6. Learned Additional Public Prosecutor per contra submitted that the prosecution has established all the circumstances against the accused in a cogent manner. P.W.1/brother of the deceased has spoken about the motive and P.W.7 cannot be said to be a chance witness and hence prayed for dismissal of the petition.

7. We find from the perusal of records that motive has not been established and there are infirmities in the evidence of PW7 who is said to have last seen the deceased with the accused. Considering the fact that the circumstances in any case do not form a complete chain pointing, to the guilt of the petitioner and the fact that the petitioner is in incarceration from 22.03.2022 onwards, this Court is inclined to suspend the sentence.

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



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- (i) 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 II Additional District and Sessions Court, Chidambaram, Cuddalore.
- (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 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.)
02.11.2023

Index : Yes / No
Neutral Citation: Yes/No
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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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To

- 1.The II Additional District and Sessions Judge,
Chidambaram, Cuddalore.
- 2.The Inspector of Police,
Kattumannarkovil Police Station,
Cuddalore District.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

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