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Crl.M.P.Nos.5458 & 5463 of 2023 in Crl.A.No.1044 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

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

Crl.M.P.Nos.5458 & 5463 of 2023
in Crl.A.No.1044 of 2022

Thirunavukarasu
S/o Natarajan .. Petitioner in Crl.M.P.No.5458/2023

Driver Seenu @ Seenuvasan
S/o Urgandi .. Petitioner in Crl.M.P.No.5463 of 2023

-vs-

The Inspector of Police
Thiruvannamalai Town Police Station
Thiruvannamalai District
(Crime No.245 of 2014) .. Respondent in both the Crl.M.P.'s

Criminal Miscellaneous Petitions filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed upon the petitioners by the learned Principal District & Sessions Judge, Thiruvannamalai in S.C.No.60 of 2015 by judgment dated 16.08.2022 and enlarge the petitioners on bail, pending disposal of the appeal.

For Petitioners :: Mr.G.Mohanakrishnan

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

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The petitioners are Accused Nos.1 and 4 in Sessions Case No.60 of 2015 on the file of the learned Principal District and Sessions Judge, Thiruvannamalai. The first accused, who is the petitioner in Crl.M.P.No.5458 of 2023, was convicted for the offence under Sections 302 and 307 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for 3 months for the offence under Section 302 of IPC and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for 2 months for the offence under Section 307 of IPC.

(ii) The fourth accused, who is the petitioner in Crl.M.P.No.5463 of 2023, was convicted for the offence under Sections 302 readwith 34 and 341 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for 3 months for the offence under Section 302 readwith 34 of IPC and also to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one week for the offence under Section 341 of IPC and the sentences imposed on the accused were ordered to run concurrently, by the judgment under appeal dated



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16.08.2022 passed by the trial Court. Pending the appeal, the petitioners have taken out the instant applications seeking to suspend the sentence and enlarge them on bail.

2. We have heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record.

3. The case of the prosecution is that the deceased was running a petty shop at his house. The deceased and his son Madheswaran used to object to persons who come to consume alcohol near the petty shop of the deceased. While so, when A1 and A2 were consuming liquor near the petty shop of the deceased on 16.05.2014, the deceased protested. The case of the prosecution is that due to such enmity, A1 & A2 came to the house of the deceased again on 17.05.2014 at about 00.50 hours and the first accused started attacking him with a knife on the right side chest, under the rib cage and abdomen of the deceased. Though the son of the deceased tried to stop the attack, the prosecution version shows that he was restrained by the second accused and the first accused attacked him also on the backside of neck with the knife. Subsequently, it is stated that the accused fled away



when the neighbours rushed to the spot. It is seen from the entire evidence that the overtact against the fourth accused is that he caught hold of the deceased. However, the fourth accused is not named in the First Information Report. Moreover, when an application was moved by the second accused earlier seeking to suspend the sentence, this Court, prima facie finding that there are arguable points with regard to the delay in registering the First Information Report, has granted bail to the second accused. In view of the same and coupled with the fact that the fourth accused has not been named in the First Information Report, this Court finds that a prima facie case has been made out by the fourth accused for suspension of sentence.

4. However, considering the specific overtact as against the first accused, this Court is not inclined to suspend the sentence imposed on the first accused, who is the petitioner in Crl.M.P.No.5458 of 2023. Therefore, Crl.M.P.No.5458 of 2023 stands dismissed.

5. Accordingly, Crl.M.P.No.5463 of 2023 stands allowed and the substantive sentence of imprisonment imposed on the petitioner/A4 is suspended and he is granted bail on the following conditions:-



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom one should be a blood relative, each for a likesum, to the satisfaction of the learned Judicial Magistrate No.I, Thiruvannamalai.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate 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.)
12.10.2023

SS

To

1. The Principal District & Sessions Judge, Thiruvannamalai
2. The Judicial Magistrate No.I, Thiruvannamalai
3. The Inspector of Police, Thiruvannamalai Town Police Station,
Thiruvannamalai District
4. The Superintendent, Central Prison, Vellore
5. The Public Prosecutor, High Court, Madras



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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

SS

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