



Crl.M.P.Nos.6316 and 6377 of 2022
in Crl.A.Nos.759 of 2019 and 494 of 2020
and Crl.M.P.No.4645 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2023
Pronounced on : 19.10.2023

CORAM :

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

Crl.M.P.Nos.6316 and 6377 of 2022
in Crl.A.Nos.759 of 2019 and 494 of 2020 and
Crl.M.P.No.4645 of 2023

Elangovan ... Petitioner/A1 in Crl.MP.No.6316 of 2022

Amutharasan ... Petitioner/A5 in Crl.MP.No.6377 of 2022

Vs.

State Rep. by
The Inspector of Police,
Paravakottai Police Station,
Paravakottai,
Thiruvarur – District.
(Crime No. 204 of 2005)

... First respondent in both the petitions

G. Senguttuvan

...Second respondent
in Crl.MP.No.6316 of 2022



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(*R2 was impleaded as per the order dated 11.05.2023 in Crl.M.P.No.6375 of 2022)

Prayer in Crl.M.P.No.6316 of 2022:- Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed in S.C.No.16 of 2017 on the file of the learned Sessions Judge, Special Court for Trial of Bomb Blast Cases, Poonamalle dated 30.09.2019 and enlarge the petitioner on bail, till the disposal of Criminal Appeal No.759 of 2019.

Prayer in Crl.M.P.No.6377 of 2022:- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed in Special Sessions Case No.16 of 2017 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamalli, Chennai – 56 dated 30.09.2019 and enlarge the petitioner on bail pending disposal of Criminal Appeal No.494 of 2020.

For Petitioner in
Crl.M.P.No.6316 of 2022 : Mr.N.R.Elango,
Senior Counsel
for M/s.A.S.Aswin Prasanna

For Petitioner in
Crl.M.P.No.6377 of 2022 : Mr.D.Veerasekharan

For first Respondent : Mr.A.Gokulakrishnan
in both the C.M.Ps Additional Public Prosecutor



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For second Respondent/Intervenor
in Crl.M.P.No.6316 of 2022 : Mr.P.Vijendran

COMMON ORDER

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

These Crl.M.P.Nos. 6316 and 6377 of 2022 have been filed to suspend the sentence imposed on the petitioners / A1 and A5 respectively, by the learned Sessions Judge, Special Court for Trial of Bomb Blast Cases, Poonamallee in S.C.No.16 of 2017, by judgment dated 30.09.2019, and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

2.The learned Sessions Judge, Special Court for Trial of Bomb Blast Cases, Poonamallee in S.C.No.16 of 2017, convicted and sentenced the petitioners/A1 and A5, as follows :

Petitioner (accused)	Offence Section	under	Sentence imposed
A1	120 (B) of IPC		To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months Rigorous Imprisonment.



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	302 IPC	To undergo life imprisonment and also to pay a fine of Rs.5,000/- in default to undergo six months Rigorous imprisonment.
A5	120 (B) of IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months Rigorous Imprisonment.
	302 r/w 109 IPC	To undergo life imprisonment and also to pay a fine of Rs.5,000/- in default to undergo six months Rigorous imprisonment.
The period of sentences imposed above are directed to run concurrently.		

3. Challenging the above conviction and sentence, the petitioners, who are arrayed as A1 and A5, have filed the above Criminal Appeals and they seek suspension of sentence in the present miscellaneous petitions.

4.Heard Mr.N.R.Elango, learned Senior Counsel appearing for M/s.A.S.Aswin Prasanna, learned counsel for the petitioner in Crl.M.P.No.6316 of 2022 in Crl.A.No.759 of 2019, Mr.D.Veerasekharan, learned counsel appearing for the petitioner in Crl.M.P.No.6377 of 2022 in Crl.A.No.494 of 2020; Mr.P.Vijendran, learned counsel for the second



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respondent/intervenor in Crl.M.P.No.6316 of 2022 and
Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for
the respondent/State.

5. It is the case of the prosecution that on 25.12.2005, the defacto complainant went to the main Road at Sundarakottai to meet his brother Tamil Selvan/deceased herein around 9.30 a.m., the deceased was coming from the northern side to south side after bathing his cattle. At that time, from the house of one Asaithambi [A-3] four persons including Ullikottai Poyyamozhi (A1), Elangovan (A2) who is the then President of Ullikottai Panchayat and UllikottaiSelvam (A-4) came running with vecharuval and attacked the deceased by shouting. The deceased's right arm came off and fell on the road. Further, he was attacked by all the four accused. There were witnesses present in the public road and were shouting “save him, save him.” The criminal gang, by collecting his hand, got into a waiting van and escaped along with cut arm through the southern side. The deceased admitted in the Mannargudi Government Hospital, was referred to for



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further treatment at Thanjavur Medical College Hospital. Thereafter, the deceased was taken to one private hospital, at about 11.20 a.m., where it was informed that he was already dead. Hence, the complaint in Crime No.204 of 2005 for the offence under Sections 307 and 302 of IPC against the accused persons.

6. The learned Senior Counsel for the petitioner in Crl.M.P.No.6316 of 2022, submitted that the petitioner/A1 was originally arrayed as the second accused, and since the first accused absconded and the case against him got split up, the petitioner was shown as the first accused in S.C.No.16 of 2017. The learned Senior Counsel further submitted that the petitioner was convicted for the offence of conspiracy to commit murder and for the offence of murder of the deceased in the case; that the Trial Judge had disbelieved the evidence of P.W.20, who is said to have overheard the accused conspiring; that the petitioner had not inflicted the fatal blow as seen from the evidence of P.W.28/the Doctor; and that since the petitioner was charged only for the offence under Section 302 IPC - Simpliciter and he



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had not inflicted the fatal blow, the finding of guilt and sentence is erroneous. The learned Senior Counsel further submitted that there is a discrepancy with regard to the manner in which the FIR was registered; that the FIR reached the learned Magistrate only at about 9.35 p.m., though the FIR was said have been registered immediately after the occurrence in the morning; that the evidence of P.W.1 (brother of the deceased) suffers from improbabilities; and that since P.W.3 accompanied the deceased to the Hospital, P.W.1's presence at the scene of the occurrence is doubtful.

7. The learned counsel for the petitioner in Crl.M.P.No.6377 of 2022, would submit that the petitioner was arrayed as the fifth accused in this case and he was only a driver in whose van the accused fled from the scene of occurrence; and that there is nothing in the evidence to suggest that the fifth accused had any role in the alleged offence of murder.



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8. Heard the learned Additional Public Prosecutor who vehemently opposed for grant of the relief of suspension of sentence to the petitioners herein as there are specific overt act against the petitioners herein. Further, the motive for committing the crime is also proved by the prosecution and that the prosecution has proved its case beyond reasonable doubt and hence, prayed for dismissal of the petitions.

9. The learned counsel for the intervenor/second respondent in submitted that the appellants have not made out any ground for suspension of sentence; that the petitioners' involvement in the crime is confirmed by the finding of guilt by the Trial Court; that this Court in W.P.No.15779 of 2008, had made observations that would show that an attempt was made earlier to divert the progress of the investigation and to exonerate the petitioners and it was only pursuant to the orders of this Court that the trial proceeded against the petitioners. The learned counsel for the Intervenor therefore prayed for dismissal of the petitions for Suspension of Sentence.



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10. This Court had given its anxious consideration to the rival submissions made by the leaned counsels on either side.

11. It is seen from the records that the points raised by the petitioner in Crl.M.P.No.6316 of 2022 can be better appreciated only during the final hearing of the appeal. It cannot be said on a mere reading of the Judgment and on the submission made by the learned Senior Counsel that the finding of guilt as regards the petitioner in Crl.M.P.6316 of 2022, is *prima facie* not in accordance with the law. It requires a deeper appreciation of the evidence on record, which could be done only during the hearing in the appeal. Therefore, this Court is of the view that the main appeal itself can be taken up for a final hearing during the first week of January 2024. Hence, Crl.M.P.No.6316 of 2022 is dismissed.

12. As regards the petitioner in Crl.M.P.No. 6377 of 2022, it is seen that admittedly, the case of the prosecution is that the petitioner/A5 was



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only a driver in whose van the accused fled away from the scene of the occurrence. Considering the fact that no specific overt act has been attributed against A5/petitioner in Crl.M.P.No.6377 of 2022 and the fact that the petitioner is undergoing incarceration right from the date of Judgment i.e., 30.09.2019, this Court is inclined to suspend the sentence imposed on the petitioner/A5 alone and he is granted bail on the following conditions:

- (i) The petitioner (A5) 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 Judicial Magistrate No.II, Mannargudi;
- (ii) The petitioner (A5) 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; and
- (iii) The petitioner (A5) 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



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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.

13. Accordingly, the Crl.M.P.No.6316 of 2022 in Crl.A.No.759 of 2019 is dismissed and Crl.M.P.No.6377 of 2022 in Crl.A.No.494 of 2020 is allowed. List the main appeals along with Crl.M.P.No.4645 of 2023, for final hearing during the first week of January 2024.

(S.S.S.R., J.) (S.M., J.)
19.10.2023

dk/ars

Internet : yes

Index : yes/no

Neutral Citation Case : yes / no



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To

1. The Judicial Magistrate No.II,
Mannargudi.
2. The Inspector of Police,
Paravakottai Police Station,
Paravakottai,
Thiruvarur – District.
3. The Superintendent ,
Puzhal Central Prison
Chennai
4. The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

dk

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S.S.SUNDAR, J.
AND
SUNDER MOHAN, J.

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

After pronouncement of the Order in the above Miscellaneous Petitions today, Mr.D.Veerasekharan, learned counsel appearing for the petitioner in Crl.MP.No.6377/2022 submitted that the Trial Court may be directed to act upon the web copy of the order dated 19.10.2023 to be produced by the Advocates/parties and accept the sureties.

2.Mr.N.R.Elango, learned Senior counsel appearing for the petitioner in Crl.MP.No.6316/2022 submitted that since the Petition filed by the petitioner in Crl.MP.No.6316/2022 seeking suspension of sentence is dismissed, he prayed that the hearing of the Criminal Appeals may be preponed to First Week of December 2023 in stead of First Week of January 2024, as stated in paragraph No.13 of the order dated 19.10.2023.

3.In view of the above, Registry is directed to post the Criminal Appeals for final hearing during First Week of December 2023.

[S.S.S.R., J] [S.M., J]
19.10.2023

AP