



WEB COPY



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

V.Muthukumar

... Petitioner/A3

Vs.

State Rep. by
The Inspector of Police,
Sooramangalam Police Station,
Salem,
Salem District.

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 374(2) of Cr.P.C. to suspend the sentence imposed by the learned Principal District and Sessions Judge, Salem dated 30.11.2022 in S.C.No.121 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.S.Manoharan
For Respondent : Mr.A.Gokulakrishnan



WEB COPY



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

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/A3, by the learned Principal District and Sessions Judge, Salem in S.C.No.121 of 2019 by the judgment dated 30.11.2022, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Principal District and Sessions Judge, Salem in S.C.No.121 of 2019, convicted the petitioner herein/A3 for the offence under Sections 302 r/w 34 and 302 r/w 201 IPC and sentenced him as follows:

Sl.No.	Offence under Section	Sentence imposed
1	302 r/w 34 of IPC	To undergo life imprisonment and also to pay a fine of Rs.1000/- in default to undergo six months RI.
2	302 r/w 201 of IPC	To undergo three years imprisonment and also to pay a fine of Rs.10,000/- in default to undergo six months RI.
The sentences are directed to run concurrently.		



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

WEB COPY

3.Challenging the above conviction and sentence, the petitioner/A3, 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 PW1 and deceased are brothers; that A1 is the close relative of the deceased; that the deceased due to a quarrel cut the neck of A1 with a blade, one month prior to the occurrence; that A1 had aversion and enmity against his brother; that the petitioner and A2 are the friends of A1; that at the instance of A1 all the accused decided to do away with the deceased; that on 20.08.2018 at about 10.00pm, the accused assaulted the deceased with a wooden log and caused his death.

5. It is the further case of the prosecution that there were no eyewitness to the occurrence; that on 21.08.2018 an FIR was registered for 'man missing' on the complaint given by PW1. Finding that there were bloodstains in the parapet wall and the broken glass pieces near a well, the investigating officer traced the the body of the deceased from an unused well



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

and thereafter, altered the offence into Section 302 of IPC. Further, investigation revealed that the petitioner and the other accused were involved in the occurrence.

6. The learned counsel for the petitioner submits that the case which is based on circumstantial evidence has not been proved against the petitioner. Motive is attributed only as against A1 and there is no other evidence connecting A3 with the offence except for stating that A3 is a friend of A1 and that a wooden log was recovered on the confession of A3. He further submitted that the accused is in custody since 30.11.2022 and prayed for suspension of sentence imposed on the petitioner.

7. The learned Additional Public Prosecutor submitted that the case is established by the prosecution beyond reasonable doubt; that there is no infirmity with the finding of the trial Court; and thus prayed for dismissal of this petition.

8. We have carefully considered the submissions made by the learned



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

counsel for the petitioner/A3 and the learned Additional Public Prosecutor.

WEB COPY

9. On perusal of the records we find that the only circumstances relied upon by the prosecution as against the petitioner/A3 is that he is a friend of A1 and a wooden log was recovered on his confession. It is a trite law that in a case based on circumstantial evidence, all the circumstances have to be conclusively established and it must form a complete chain so as to rule out any other hypothesis, except pointing out to the guilt of the accused/petitioner herein.

10. We are of the view that the circumstances relied upon by the prosecution cannot be the basis to hold that the petitioner was involved in the commission of the offence. Since the circumstances have not been conclusively established by the prosecution against the petitioner/A3, he has a fair chance of success in the appeal.

11. Therefore, for the aforesaid reasons, considering the fact that the petitioner is in custody from 30.11.2022 and that the appeal is not likely to



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

be taken up for hearing in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioner herein.

12. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A3 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 Principal District and Sessions Judge, Salem;
- (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.

(S.S.S.R., J.) (S.M., J.)
30.11.2023

ars
Internet : Yes

Page 6 of 10



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

Index : Yes / No

Note to office:

Upload the order copy forthwith

Issue order copy by 01.12.2023



WEB COPY



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

To

- 1.The Principal District and Session Judge,
Salem.
- 2.The Inspector of Police,
Sooramangalam Police Station,
Salem, Salem District.
- 3.The Superintendent,
Central Prison, Coimbatore.4
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023

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

ars

Crl.MP.No.5661 of 2023
in Crl.A.No.457 of 2023



WEB COPY



CrI.MP.No.5661 of 2023
in CrI.A.No.457 of 2023

Dated: 30.11.2023