



WEB COPY



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

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.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

1. Arumugam
2. Kandhan
3. Surrender
4. Suga @ Sudhagar
5. Thennarasu

... Petitioners in Crl.MP.No.7177 of 2023

1. Osaimani
2. Saranraj
3. Stalin
4. Muthukumar

... Petitioners in Crl.MP.No.7200 of 2023

Vs.

State Rep. by
The Inspector of Police,
Cuddalore Port Police Station,
Cuddalore.
(Crime No.36/2018.)

... Respondent in both the petitions



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

Criminal Miscellaneous Petitions filed under Section 389(1) Cr.P.C. to suspend the sentence imposed on the petitioners in S.C.No.31 of 2019 on the file of the learned I Additional District & Sessions Judge, Cuddalore by a judgment dated 28.04.2023 and enlarge the petitioners on bail, pending disposal of the Criminal Appeal Nos.560 and 563 of 2023.

For Petitioners : Mr.N.R.Elango, Senior Counsel
for M/s.A.S.Aswin Prasanna

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

COMMON ORDER

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

These Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed on the petitioners by the I Additional District & Sessions Judge, Cuddalore, in S.C.No.31 of 2019, by judgment dated 28.04.2023, and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

2.The learned I Additional District & Sessions Judge, Cuddalore, in S.C.No.31 of 2019, convicted and sentenced the petitioners as follows :



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

WEB COPY

Petitioners (accused) in Crl.Mp.No. 7177 of 2023	Offence for which convicted	Sentence
1 st petitioner	Sec.148 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine.
	Sec.294 (b) IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 months and no fine.
	Sec.342 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 1 year and no fine.
	Sec.302 IPC	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
2 nd petitioner	Sec.148 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine.
	Sec.342	Convicted and sentenced to undergo Rigorous Imprisonment of 1 year and no fine.
	Sec.302 IPC	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
3 rd petitioner	Sec.148 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine.
	Sec.342 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 1 year and no fine.
	Sec.324 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine.
	Sec.302 IPC	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
	Sec.307 IPC	Acquitted under Section 235(1) Cr.P.C.



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

Petitioners (accused) in Crl.Mp.No. 7177 of 2023	Offence for which convicted	Sentence
4 th petitioner	Sec.148 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine.
	Sec.302 IPC	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
5 th petitioner	Sec.148 IPC	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine.
	Sec.302 IPC	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.

Petitioners (accused) in Crl.Mp.No. 7200 of 2023	Offence for which convicted	Sentence
1 st petitioner	Sec.148	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.324	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.302 r/w.149	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
2 nd petitioner	Sec.148	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.324	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

Petitioners (accused) in Crl.Mp.No. 7200 of 2023	Offence for which convicted	Sentence
	Sec.302 r/w.149	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
3 rd petitioner	Sec.148	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.324	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.307	Acquitted under Section 235 (1) Cr.P.C.
	Sec.302 r/w.149	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.
4 th petitioner	Sec.148	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.325	Convicted and sentenced to undergo Rigorous Imprisonment of 3 years and no fine imposed.
	Sec.302 r/w.149	Convicted and sentenced to undergo Life Imprisonment and Rs.5000 fine in default Rigorous Imprisonment of 1 year.

3.Challenging the above conviction and sentence, the petitioners, who are arrayed as A1, A2, A3, A7, A13, A4, A6, A15 and A20, have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present miscellaneous petitions.



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

WEB COPY

4. Heard Mr.N.R.Elango, learned Senior Counsel appearing for M/s.A.S.Aswin Prasanna, learned counsel for the petitioners and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. It is the case of the prosecution that there was a conflict among the Villagers of Devanampattinam and Sonangkuppam Villages with regard to usage of banned fishing net during the annual fishing ban period. Due to the said enmity, on 15.05.2018, at about 6.00 a.m., there was a quarrel among the fisherman of these two Villages when they were fishing in sea zone. Thereafter, tension prevailed in the two Villages. Subsequently, on the same day at about 9.00 a.m., having grudge over the quarrel held in the sea zone among the two Villagers, the accused persons, who belonged to Devanampattinam Village armed with deadly weapons, unlawfully assembled at Sonangkuppam near Puyal Koondur to commit rioting and murder of the Villagers of Sonangkuppam. On seeing the deceased Panchanathan, the first accused/Arumugam instigated the mob to kill the



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

deceased and as a result of which, the deceased was attacked by the accused with deadly weapons, which caused his death.

6. The learned Senior Counsel for the petitioners pointed out serious infirmities in the prosecution case, which are as follows:

a) The eyewitness and the injured witness viz., PW1, PW3 and PW8 had deposed before the Trial Court that they were all taken to the Hospital by ambulance and the police were present at the scene of occurrence when they were taken in the ambulance. The Doctor, who made entries in the Accident Register PW18, on the contrary had recorded that all the injured witness were brought by Police Jeep. Both the versions confirmed the presence of the police, much prior to the registration of the FIR.

b) PW18 recorded in the Accident Register that the witnesses and the person who brought the deceased had stated that the deceased was attacked by unknown persons, whereas in the FIR, which was registered 2 hours later at 12.30 p.m. the



WEB COPY



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

names of the accused with the fathers names were mentioned.

According to the Sub Inspector of Police, who registered the FIR, the said information was furnished by the PW1, and therefore, the accused were falsely implicated after deliberation.

c) The evidence of P.W.8 rules out the presence of P.W.1 as witness the occurrence. In his deposition P.W.8 had stated that on the instruction of the villagers, P.W.1 had lodged the complaint and that if P.W.1 had been present in the occurrence, he would have also been killed.

d) The learned Senior Counsel also pointed out to the FIR, which was marked as Ex.D1 by PW31, the Inspector of Police of Devanampattinam Police Station. The said PW31, had registered an FIR on the same day (i.e.,) 15.05.2018 against 30 persons belonging to Devanampattinam Village stating that they had assembled to go Sonangkuppam Village with arms to



WEB COPY



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

attack the Villagers in the said Village; that when the Sub Inspector of Police attempted to prevent the accused persons therein, he was threatened and thereafter the Villagers of Devanampattinam left for Sonangkuppam Village. The learned Senior Counsel therefore submitted that the 30 accused named in the said FIR could have been the persons involved in the murder at Devanampattinam Village. However none of the accused in the case registered by the Sub Inspector of Police of Devanampattinam Village are named in the FIR relating to the murder case. However 20 persons named in the FIR relating to the murder case and who faced trial are different persons who have been falsely implicated.

(e) The learned Senior Counsel further pointed out that the statements of all the witness said to be recorded during the investigation on 16.05.2018 were sent to the Magistrate only on 05.10.2018.



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

WEB COPY

(f) The learned Senior Counsel further submitted that even with regard to the manner in which the complaint was lodged before the Sub Inspector of Police, there is a contradiction inasmuch as PW1 would state that he went to the Police Station at 4.30 p.m. to lodge the complaint, whereas the Sub Inspector of Police stated that he went to the Hospital to record the statement of PW1.

(g) The learned Senior Counsel pointed out that while answering the submissions of the defence that the deceased was not taken by P.W.1 to the Hospital, the learned Judge observed that the Doctor who made entries in the Accident Register had by mistake noted the name of Balachandher/Kumaran as persons who brought the deceased instead of Painthamizhkumaran. The learned Senior Counsel submitted that such an observation reflects an erroneous appreciation of the evidence on record.



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

WEB COPY

(h). The learned Senior Counsel submitted that since the FIR has been fabricated, the prosecution case is highly doubtful and submitted that the Judgment of the Trial Court is not based on any acceptable evidence and prayed for suspension of sentence.

7. 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 petition.

8. This Court has already granted suspension of sentence for similarly placed accused in Crl.Mp.No.6731 of 2023 in Crl.A.No.543 of 2023. We find that the submissions of the learned Senior Counsel appearing for the petitioners is supported by the evidence on record and hence, the petitioners have made out a prima facie case for grant of



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

suspension of sentence. Accordingly, the Criminal Miscellaneous Petitions stand allowed. Therefore, the sentence of imprisonment imposed on the petitioners, is suspended and they are granted bail on the following conditions:

- (i) The petitioners 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 I Additional District & Sessions Judge, 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 petitioners 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 they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

WEB COPY

9. Accordingly, these Criminal Miscellaneous Petitions are ordered.

(S.S.S.R., J.) (S.M., J.)
12.10.2023

pvs

Internet : Yes

Index : Yes / No

To

1. I Additional District & Sessions Judge,
Cuddalore

2. The Inspector of Police,
Cuddalore Port Police Station,
Cuddalore.

3. The Superintendent,
Central Prison,
Cuddalore.

4. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

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

pvs

Crl.M.P.Nos.7177 and 7200 of 2023
in Crl.A.No.560 and 563 of 2023

12.10.2023