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Crl.M.P.No.12266 of 2022
in Crl.A.No.867 of 2022

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

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A2 by the Sessions Judge, Sessions Court No.2, Kancheepuram, in S.C.No.26 of 2012, by judgment dated 18.07.2016, and to enlarge the petitioner/A2 on bail pending disposal of the above Criminal Appeal.

2.It is the case of the prosecution that on 13.09.2011, at about 02.00 hours, the accused persons, with a common intention to murder the deceased and to commit robbery, trespassed into the house of the deceased by breaking open the window; that A1 cut the deceased with a knife on his head thrice and the petitioner/A2 also cut the deceased with knife on the front of the neck and when the deceased tried it to ward off with his left hand, a finger on the left hand of the deceased was severed; that as a result of the grievous injuries, the deceased died on the spot; that



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the accused robbed gold thali chain, gold bangles, gold rings, gold ear stud, silver anklet and cell phones from the possession of the wife of the deceased, the *de facto* complainant, and also caused cut injury on her right side forehead; that the accused also took away a wrist watch and gold chain from the body of the deceased. On the complaint given by the *de facto* complainant, a case was registered in Crime No.521 of 2011 against the accused for the offences under Sections 449, 302, 394 r/w.397 and 404 IPC.

3.The criminal case then culminated into S.C.No.26 of 2012 and was tried by the learned Sessions Judge, Sessions Court No.2, Kancheepuram. A1 died during the pendency of the trial and ultimately, the petitioner/A2 was convicted and sentenced as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 449 IPC	Rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default, to undergo six months rigorous imprisonment.
Section 302 IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment for six months
Section 394 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-, in default, to undergo six months rigorous



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	imprisonment.
Section 404 IPC	Rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.
The sentences were ordered to run concurrently	

4.Challenging the above conviction and sentence, the petitioner/A2 has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present miscellaneous petition.

5.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6.It is a case of murder for gain and conviction. The trial Court convicted the appellant based on the evidence of the injured eye-witness, the wife of the deceased. The allegation against the petitioner is that he entered into the house of the deceased, caused the death of the deceased, and attacked P.W.1 (eye-witness) with lethal weapons to commit robbery. Apart from the evidence of eye-witness, the recovery pursuant to the confession was relied upon by the trial Court to convict the petitioner. Considering the nature of the offence and the manner in which



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the offence is alleged to have been committed by the petitioner, this Court is unable to find a *prima facie* case in favour of the petitioner to suspend the sentence imposed on him.

7. Therefore, this Criminal Miscellaneous Petition is dismissed.

8. Since the Criminal Appeal has been filed belatedly and the petitioner is in custody for more than 7 years. The typed set is also made ready. Hence, the Registry is directed to list the Criminal Appeal for final hearing during the 3rd week of January, 2024.

(S.S.S.R., J.) (S.M., J.)
15.12.2023

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