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Crl.M.P.No.9992 of 2023 in Crl.A.No.739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

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

Crl.M.P.No.9992 of 2023
in Crl.A.No.739 of 2023

Subramani
S/o Muniyan

.. Petitioner

-VS-

1. State represented by
The Inspector of Police
Thiruvannamalai Town Police Station
(Crime No.1051 of 2012)

2. Thirupathi Balaji @ Venkatesan
Selvam (died)
Kasi (died)

3. Meenatchi
4. Murugan
5. Chandrasekar
6. Iyyappan
7. Vijayaraj
8. Sadaiyan

.. Respondents

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence passed in S.C.No.14 of 2014 by the learned Principal District and Sessions Judge at Thiruvannamalai by its judgment dated 23.01.2023 and enlarge the



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petitioner on bail, pending disposal of the above appeal.

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For Petitioner :: Mr.I.Kowser Nissar

For Respondents :: Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1

ORDER

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

The petitioner, who is Accused No.10 in S.C.No.14 of 2014 on the file of the learned Principal Sessions Judge (FAC), Thiruvannamalai, stands convicted for the offence under Sections 341, 302 readwith 149 of IPC and sentenced to undergo simple imprisonment for one year for the offence under Section 341 of IPC and to undergo imprisonment for life and also to pay a fine of Rs.3,000/-, in default to undergo rigorous imprisonment for a period of two years for the offence under Section 302 read with 149 of IPC, which are ordered to run concurrently, vide the judgment dated 23.01.2023 passed by the trial Court. Challenging the said conviction and sentence, the petitioner has filed the above appeal. The present miscellaneous petition has been filed to suspend the sentence and enlarge him on bail, pending the above appeal.

2. It is the case of the prosecution that due to prior enmity, A1 to A10



conspired to do away with the deceased; that pursuant to the said conspiracy, on 02.07.2012, at about 6.00 A.M., A1 to A4 went to the scene of occurrence; that A5 was asked to go in advance and inform the movement of the accused and that A10, the petitioner herein, pursuant to the conspiracy, made A5 & A6 surrender before the Court claiming responsibility for the occurrence in order to save A1 and to screen the evidence.

3. The learned counsel for the petitioner submitted that even according to the prosecution, A10 was not present at the scene of occurrence and was not responsible in causing the death of the deceased; that there is no evidence to establish conspiracy and the witnesses examined by the prosecution to prove the alleged conspiracy, turned hostile; that there is no evidence to suggest that A10 made A5 and A6 to surrender and make it appear that they were involved in the offence to screen the evidence and to aid A1 to escape punishment.

4. The learned Additional Public Prosecutor, per contra, submitted that the prosecution has established the case beyond reasonable doubt and the learned trial Judge had considered all the circumstances to hold that the petitioner is guilty of conspiracy and for screening the evidence.



5. We have carefully considered the submissions made on either side.

WEB.COM We find from the judgment of the trial Court and from the evidence of the witnesses that there is no direct evidence to establish that the petitioner conspired to do away with the deceased along with the other accused. P.W.2, P.W.3, P.W.4, P.W.6, P.W.8 and P.W.12 turned hostile. P.W.1, the wife of the deceased speaks about the participation of A1 to A4 in the occurrence and the subsequent lodging of the complaint, Ex.P1. We also find that there is no evidence to suggest that A10 was responsible in the false surrender of A5 and A6 before the Magistrate. Therefore, we are of the view that the petitioner's involvement in the offence has not been conclusively established by the prosecution and that the petitioner is having a fair chance of success in the appeal. Hence, we are inclined to suspend the sentence so far as the petitioner is concerned.

6. Accordingly, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the petitioner is suspended and he is granted bail on the following conditions:-

- (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



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Judicial Magistrate No.1, 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.)
21.11.2023

SS

To

1. The Principal Sessions Judge (FAC), Thiruvannamalai
2. The Judicial Magistrate No.1, 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
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