



Crl.M.P.No.9204 of 2023 in Crl.A.No.1220 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

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

Crl.M.P.No.9204 of 2023
in Crl.A.No.1220 of 2022

R.Arunpandian

.. Petitioner

-vs-

The State of Tamil Nadu
rep.by the Inspector of Police
Annurpalayam Police Station
Tiruppur, Tiruppur District

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed in S.C.No.90 of 2021 by the learned Principal District and Sessions Judge, Tiruppur, Tiruppur District dated 13.09.2022 and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner :: Mr.J.Selvarajan

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



Crl.M.P.No.9204 of 2023 in Crl.A.No.1220 of 2022

ORDER

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

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The petitioner, who was arrayed as Accused No.2 in S.C.No.90 of 2021 on the file of the learned Principal Sessions Judge, Tiruppur, Tiruppur District, stands convicted for the offence under Section 302 and Section 201 read with 302 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for 3 months for the offence under Section 302 of IPC; to undergo 3 years of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 3 months for the offence under Section 201 read with 302 of IPC, which are ordered to run concurrently, vide the judgment dated 13.09.2022 of the trial Court. Challenging the conviction and sentence, the petitioner has filed the above appeal along with Accused Nos.1 & 3, who were also convicted and sentenced to suffer imprisonment as aforesaid. However, the present miscellaneous petition has been filed by the petitioner/A2 seeking to suspend the sentence and enlarge him on bail, pending the above appeal.

2. It is the case of the prosecution that the first accused is the father of the second accused. The third accused is the second wife of the first



Crl.M.P.No.9204 of 2023 in Crl.A.No.1220 of 2022

accused; that the deceased is a small time money lender and the first accused used to borrow money from him; that the deceased attempted to have illicit relationship with the third accused and used to call her often; that the third accused complained to the first accused about the advances made by the deceased; that all the accused, therefore, decided to do away with the deceased; that on 07.04.2014, at about 11.45 P.M., the first accused called the deceased to his house, where the second and third accused lived; that on 08.04.2014, at about 2.30 A.M., when the deceased went to the house of the accused 1 to 3, all the accused persons attacked the deceased with wooden logs and handle of the hammer and caused his instantaneous death.

3. The learned counsel appearing for the petitioner submitted that the petitioner/A2 had no motive for the alleged occurrence; that admittedly the third accused is the second wife of the first accused; that there is no evidence to show that the second accused was present in the house on the alleged day of occurrence; that the entire case is based on circumstantial evidence; that P.W.4 and P.W.6 were examined by the prosecution to prove the last seen theory; that both P.W.4 and P.W.6 have not spoken about the presence of the second accused in the house or that they last saw the



deceased in the company of the second accused and that therefore, the petitioner has got a fair chance of success in the above appeal and prayed for suspension of sentence.

4. The learned Additional Public Prosecutor, per contra, submitted that it is a fact that the accused 1 to 3 lived in the same house. Therefore, the fact that P.W.4 and P.W.6 saw the deceased coming to the house of the accused 1 to 3 is a strong circumstance against all the accused; that the motive of the second accused has also been sufficiently established by the prosecution through other evidence and therefore, prayed for dismissal of the petition.

5. We have carefully considered the evidence on record and the submissions made by the counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

6. This case is based on circumstantial evidence. P.W.4 and P.W.6 have not spoken about the presence of the second accused on the fateful day. The motive alleged by the prosecution against the second accused also has not been conclusively established. It is a settled position of law that any



case based on circumstantial evidence, the circumstances have to be conclusively established and all the circumstances must form a complete chain pointing out only to the guilt of the accused, ruling out any other hypothesis. Considering the overall facts and circumstances of the case, this Court is of the view that the circumstances against the petitioner/A2 have not been conclusively established. In our opinion, he has got a fair chance of success in the above appeal. Therefore, we are inclined to suspend the sentence imposed against him.

7. 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 Judicial Magistrate, Tiruppur.
- (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



Crl.M.P.No.9204 of 2023 in Crl.A.No.1220 of 2022

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.)
17.11.2023

SS

To

1. The learned Principal Sessions Judge, Tiruppur, Tiruppur District
2. The Judicial Magistrate, Tiruppur, Tiruppur District
3. The Inspector of Police, Anupparpalayam Police Station, Tiruppur
4. The Superintendent, Central Prison, Coimbatore
5. The Public Prosecutor, High Court, Madras



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AND

SUNDER MOHAN, J.

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