



Crl.MP.Nos.10704 to 10708 and 10761 and 10762 of 2023
in Crl.A.Nos.839 & 880 of 2019 and 38, 43, 54 and 62 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.Nos.10704 to 10708 and 10761 and 10762 of 2023
in Crl.A.Nos.839 & 880 of 2019 and 38, 43, 54 and 62 of 2021

Crl.M.P.No.10704 of 2023

Madhesh

(The accused was split up from the mother case in S.C.No.122 of 2016 and the same was disposed on 21.08.2019) and presently confined in Central Prison, Coimbatore.

...Petitioner/Appellant/Accused

Vs.

State represented by the Inspector of Police,
Paramathi Police Circle,
Namakkal District.
(Crime No.123/2016.)

...Respondent/Complainant



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Criminal Miscellaneous Petitions filed under Section 389(1) Cr.P.C. to suspend the sentence imposed on the petitioner in S.C.No.76 of 2019 on the file of the learned Principal Sessions Judge, Namakkal, by a judgment dated 30.01.2020 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal No.43 of 2021.

For Petitioner : M/s.A.Abdul Lathif
in all Crl.M.Ps.

For Respondent : Mr.A.Gokulakrishnan
in all Crl.M.Ps. 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 learned Principal Sessions Judge, Namakkal in S.C.Nos.122 and 123 of 2016 and S.C.Nos.76 and 77 of 2019, by the judgment dated 21.08.2019 and 30.01.2020, respectively and enlarge the petitioners on bail, pending disposal of the above Criminal Appeals.

2. The petitioners in Crl.M.P.Nos.10706 & 10762 of 2023 and



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Crl.M.P.Nos.10705 & 10761 of 2023 were arrayed as A1 and A4 in S.C.Nos.122 and 123 of 2016 respectively. The petitioner in Crl.M.P.Nos.10704 and 10708 of 2023, was arrayed as A2 in S.C.Nos.76 and 77 of 2019. The case against A2 was split up from the mother cases (i.e.,) S.C.Nos.122 and 123 of 2016, and he was tried in said Sessions Cases. The petitioner in Crl.M.P.No.10707 of 2023 was arrayed as A5 in S.C.No.122 of 2016 alone and he was not an accused in S.C.No.123 of 2016. A3 had filed appeals in Crl.A.Nos.772 and 773 of 2022 and the sentence imposed on him was suspended by this Court earlier in Crl.M.P.Nos.9471 and 9475 of 2022.

3. For the sake of convenience, the petitioners are referred as per their ranking in the Sessions Cases.

4. The learned Principal Sessions Judge, Namakkal in S.C.Nos.122 and 123 of 2016 and 76 and 77 of 2019, convicted and sentenced the petitioners as follows:



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(i) A1/petitioner in CrI.M.P.Nos.10706 and 10762 of 2023

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S.C.Nos.	Offence for which convicted	Sentence
S.C.No.122 of 2016	Sec.364(A) IPC	Convicted and sentenced to undergo Life Imprisonment and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.395 IPC	Convicted and sentenced to undergo 5 years of Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 15 months.
S.C.No.123 of 2016	Sec.364(A) IPC	Convicted and sentenced to undergo Life Imprisonment and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.394 IPC	Convicted and sentenced to undergo 5 years of Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for 15 months.
The sentences imposed are ordered to run concurrently.		

(ii) A2/petitioner in CrI.M.P.Nos.10704 and 10708 of 2023:

S.C.Nos.	Offence for which convicted	Sentence
S.C.No.76 of 2019	Sec.120 (B) IPC	Convicted and sentenced to undergo Rigorous Imprisonment for Life and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.364(A) IPC	Convicted and sentenced to undergo



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S.C.Nos.	Offence for which convicted	Sentence
		Imprisonment for Life and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.397 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 21 months.
	Sec.395 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for 15 months.
S.C.No.77 of 2019	Sec.120 (B) IPC	Convicted and sentenced to undergo Life Imprisonment and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.364(A) IPC	Convicted and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.394 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 15 months.
The sentences imposed are ordered to run concurrently.		



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(iii) A4/petitioner in Crl.M.P.Nos.10705 and 10761 of 2023:

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S.C.Nos.	Offence for which convicted	Sentence
S.C.No.122 of 2016	Sec.364(A) IPC	Convicted and sentenced to undergo Imprisonment for Life and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.395 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 15 months.
S.C.No.123 of 2016	Sec.364(A) IPC	Convicted and sentenced to undergo Life Imprisonment and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for 4 years.
	Sec.394 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for fifteen months.
The sentences imposed are ordered to run concurrently.		

(iv) A5/petitioner in Crl.M.P.Nos.10707 of 2023:



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S.C.No.	Offence for which convicted	Sentence
S.C.No.122 of 2016	Sec.364(A) IPC	Convicted and sentenced to undergo Imprisonment for Life and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 4 years
	Sec.395 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for 15 months .
The sentences imposed are ordered to run concurrently.		

5.Challenging the above convictions and sentences, the petitioners who are arrayed as A1, A2, A4, A5 have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present miscellaneous petitions.

6.Heard Mr.A.Abdul Lathif, learned Counsel appearing for petitioners and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

7. As stated earlier, the petitioners had challenged the Judgment of



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conviction and sentence in the two Sessions Cases. The facts in the two Sessions Cases are similar in nature. They pertain to two occurrence (i.e) one on 03.05.2016 and the other on 07.05.2016. Broadly, it is the case of the prosecution that the accused stopped two different vehicles on the dates referred above, which were plying on the road, abducted the driver and thereafter, attacked the persons in the vehicles and robbed valuables from them.

8. The entire matter turns on a very short point. In both Sessions cases, there are two charges against the petitioners. In S.C.No.122 of 2016, the first charge against the petitioner is under Section 364-A of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and the second charge is under Section 395 read with 397 of IPC. In S.C.No.123 of 2016, the first charge against the petitioner is under Section 364-A of IPC and the second charge is under Section 394 of IPC. The conviction and sentences are also almost similar with very minor differences.

9. The learned counsel for the petitioners submitted that this Court had suspended the sentence imposed on A3 who was facing trial in both



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Sessions Cases (i.e.,) S.C.No.122 of 2016 for the offence under Section 364 (A) of IPC; and S.C.No.123 of 2016 for the offence under Section 395 r/w 397 of the IPC; and that the petitioners herein would also be entitled to suspension of the sentence on the same ground.

10. We find from the order passed by this Court dated 08.06.2023 (Crl.M.P.Nos.9471 and 9475 of 2022 in Crl.A.No.722 & 723 of 2022) in respect of A3 that this Court had held that the charge under Section 364 (A) of IPC against the accused is incorrect. This Court had observed as follows:

“12. Considering the charge and considering the prosecution case which was believed by the trial Court, on a plain reading of the language in which Section 364-A is couched brings to light that on the face of the record the conviction may not be sustainable and this prima-facie aspect of the matter is very palpable. The language in which Section 364 - A is couched and the prosecution case believed by the trial Court speak for themselves and therefore we deem it appropriate to not to dilate further on this aspect of the matter. Learned counsel for petitioner also drew our attention to Section 464 of Cr.P.C. which talks about the effect of error



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in charge.

13. Section 464 of Cr.P.C. reads as follows:

'464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.'

14. Adverting to aforementioned Section 464 of Cr.P.C., learned counsel submitted that the chances of acquittal are



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very palpable, i.e., tangible.

*15. Learned Additional Public Prosecutor in response to the above argument submitted that there is conviction on the second charge, namely, Section 395 of IPC as regards S.C.No.122 of 2016 and Section 394 of IPC as regards S.C.No.123 of 2016. There is a straightforward answer on a demurrer to this submission of the prosecutor. That straightforward answer is, assuming the conviction is sustained, the petitioner has already served more than the sentence that has been awarded by the trial Court. To be noted, as regards Section 395 of IPC in S.C.No.122 of 2016, the sentence is five years rigorous imprisonment and fifteen months simple imprisonment in the event of default to pay fine amount of Rs.3,000/- but the petitioner has been incarcerated from 08.05.2016 to-date continuously which is seven years as of today. Ironically the sentence would turn seven today. Be that as it may, as regards S.C.No.123 of 2016, the sentence is five years rigorous imprisonment and fifteen months simple imprisonment in the event of default to pay fine amount of Rs.2,000/-. Therefore, the same principle applies to the second Session Case also. In this view of the matter, we deem it appropriate to respectfully refer to a judgment of Hon'ble Supreme Court rendered very recently (02.05.2023) i.e., **Omprakash Sahni** case, being **Omprakash Sahni Vs Jai Shankar Chaudhary** reported in 2023 **SCC OnLine SC 551**.*



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Hon'ble Supreme Court while dealing with principles of law/test qua suspension of sentence, made it clear that if a convict appears to be entitled to have an acquittal at the hands of the Court, he should not be kept behind bars for a long time till conclusion of the appeal which may take a longer time for decision and disposal and as regards test in cases of such nature, Hon'ble Supreme Court postulated that something which is very apparent on the face of the record on the basis of which the Appellate Court arrives at prima-facie satisfaction that the conviction may not be sustainable such prima-facie satisfaction should be palpable. The only rider is, this should be done without re-appreciation of evidence under Section 389 legal drill. In the case on hand, there is no re-appreciation of evidence and this is a straightforward interpretation of language in which Section 364-A of IPC is couched as regards charge No.1 and sentence served thus far in both the Session cases."

11. The observations made by this Court in respect of A3 in both the cases who is the appellant in Crl.A.Nos.772 and 773 of 2022, is squarely applicable to the petitioners in Crl.M.P.Nos.10704 to 10708 and 10761 and 10762 of 2023 referred above.



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12. Further, it is submitted that the petitioners are in custody from 21.08.2019. Therefore, this Court is inclined to Suspend the Sentence imposed on the petitioners on the following conditions.

(i) The petitioners shall deposit the fine amounts in all the Session Cases, if not already deposited;

(ii) 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 Principal Sessions Judge, Namakkal;

(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



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trial Court on any other day in lieu of the date
of their absence, as directed by the trial Court.

13. Accordingly, these Criminal Miscellaneous Petitions are ordered.

(S.S.S.R., J.) (S.M., J.)
12.12.2023

Internet : Yes

Index : Yes / No

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Note: **Issue order on 12.12.2023.**

Upload the order copy forthwith.

To

1. The Principal Sessions Judge,
Namakkal

2. The Inspector of Police,
Paramathi Police Circle,
Namakkal District.

3. The Superintendent,
Central Prison,
Salem.

4. The Superintendent,
Central Prison,
Coimbatore.

5. The Public Prosecutor,
High Court, Madras.



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

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