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Crl.M.P.No.11286 of 2022
in Crl.a.No.860 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2023

CORAM :

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND**

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.M.P.No.12186 of 2022
in Crl.A.No.860 of 2022

1. Dheena @ Venkatesh

2. Ayyappan

..Appellant /Accused 3 and 7

Vs.

State by;
The Inspector of Police,
Taluka Police Station,
Villupuram

... Respondent/Complainant

(Ref: Cr.No.31/2014)

Prayer : Criminal Miscellaneous Petition filed under Section 389 of Cr.P.C., to suspend the sentence imposed against the petitioners herein in the judgment and order dated 21.06.2022 in S.C.No.6 of 2017, on the file of Additional Sessions Judge, Villupuram (FTC) and enlarge the petitioners on bail.



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in CrI.a.No.860 of 2022

For Petitioners : Mr.Ilayaraja Kandasamy

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by N. ANAND VENKATESH, J.]

This petition has been filed seeking for suspension of sentence imposed against the petitioners through judgment and order dated 21.06.2022 in S.C No.6 of 2017, on the file of the Additional Sessions Judge (FTC), Villupuram and to enlarge the petitioners on bail, pending disposal of the Criminal Appeal.

2.The petitioners (A3 and A7) were convicted and sentenced by the Court below in S.C.No.6 of 2017 in the following manner:

Accused	Provision under which convicted	Sentence/Punishment
Dheena @ Venkatesh [A3]	Section 148 IPC.	Six months Simple Imprisonment.
	Section 302 IPC r/w 149 IPC.	Life Imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo two years Rigorous Imprisonment.



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Accused	Provision under which convicted	Sentence/Punishment
Ayyappan/A7	Section 147 IPC	Three months Simple Imprisonment.
	Section 323 IPC	One month Simple Imprisonment.
	Section 302 IPC r/w Section 149 IPC	Life Imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo two years Rigorous Imprisonment.

The aforesaid sentences were ordered to run concurrently.

3. The case of the prosecution is that the cousin of the deceased Gopi and A1 had a love affair. On coming to know of the same, the family members of the deceased warned A1 and his family members. On 16.01.2014, at about 03.00 p.m., A1 to A7 are said to have formed into an unlawful assembly and they barged into the house of the deceased and had a wordy quarrel. It resulted in exchange of blows and as a result, the accused persons are said to have attacked the deceased and others with iron pipe, knife and wooden log and four persons sustained injuries and Gopi succumbed to the injuries. There are totally seven accused persons in this case and the petitioners were ranked as A3 and A7.

4. Heard Mr.Ilayaraja Kandasamy, learned Counsel for the petitioners and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of



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the respondent.

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5. On carefully going through the materials available on record and the judgment passed by the Court below, we find that the overt acts attributed against the petitioners was that they attacked the victims viz., P.W-2, P.W-3 and P.W-5 with pipe, knife and fist. No overt act has been attributed against the petitioners insofar as the attack made on the deceased.

6. The learned Counsel pointed out to the fact that the incident took place on 16.01.2014 and the deceased died only on 05.10.2014 and hence, it was contended that there is no nexus between the injury and death of the deceased Gopi. Certain contradictions were also pointed out in terms of the delay in launching of the prosecution by 8 hours and the absence of Test Identification parade to identify the accused persons.

7. Considering the facts and circumstances of the case and also considering the fact that the petitioners have already suffered incarceration for a period of nearly seven months and that there are arguable points involved in the appeal and further, the petitioners have no bad antecedents, we are inclined to suspend the



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sentence imposed by the Court below in S.C.No.6 of 2017 dated 21.06.2022,

subject to the following conditions:-

- (i) The petitioners shall deposit the fine amount before the trial Court, if not already deposited.
- (ii) The petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional Sessions Court (Fast Track] Villupuram.
- (iii) 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 cards or Bank passbooks to ensure their identity; and
- (iv) The petitioner shall appear before the respondent police every Monday at 10.30 a.m., for a period of eight weeks. After completion of the said period, the petitioners shall report before the learned Additional Sessions Court (Fast Track] Villupuram, 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.



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Accordingly, this Criminal Miscellaneous petition is disposed of.

(P.N.P.,J.)

(N.A.V.,J.)

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Internet : Yes/No

Index : Yes/No

Speaking order /Non-Speaking order

rka/nsd



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To

1. The Additional Sessions Judge (Fast Track] Villupuram.
- 2.The Superintendent of Prison,
Central Prison, Cuddalore.
- 3.The Inspector of Police
Taluk Police Station
Villupuram.
- 4.The Public Prosecutor
High Court of Madras.



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P.N.PRAKASH,J.

and

N. ANAND VENKATESH,J.

rka

Pre-Delivery Order in
Crl.M.P.No.12186 of 2022
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09.01.2023