



Crl.M.P.No.10226 of 2023 in Crl.A.No.1168 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM

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

Crl.M.P.No.10226 of 2023
in Crl.A.No.1168 of 2022

1. Baskar

S/o Chandru

2. Asaithambi @ Ponni

S/o Chandru

.. Petitioners

-vs-

State rep.by

The Inspector of Police

Anaikaran Chathiram Police Station

Mayiladuthurai District

(Crime No.345 of 2019)

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed in S.C.No.52 of 2020 by the learned Additional District & Sessions Judge, Mayiladuthurai, dated 12.07.2022 and enlarge the petitioners on bail, pending disposal of the appeal.

For Petitioners :: Mr.G.S.Magesh

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



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ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

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The petitioners, who are accused nos.1 & 2, stand convicted for the offence under Sections 294(b), 506(ii) & 302 of IPC and were sentenced to pay a fine of Rs.1,000/- each, in default to undergo one month rigorous imprisonment for the offence under Section 294(b) of IPC; to undergo two years rigorous imprisonment along with fine of Rs.5,000/- each, in default to undergo 3 months rigorous imprisonment for the offence under Section 506(ii) of IPC and to undergo imprisonment for life along with fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for 6 months, vide the judgment dated 12.07.2022 passed by the learned Additional District and Sessions Judge, Mayiladuthurai. Challenging the said conviction and sentence, they have preferred the appeal. Pending the appeal, the petitioners have taken out the instant miscellaneous petition seeking to suspend the sentence and enlarge them on bail.

2. The case of the prosecution is that on 08.12.2019, at about 17.00 hours, when the deceased Sathyamoorthy was unloading the bricks near his home to construct a house at his place, the petitioners came there and



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quarrelled with him using filthy language; that at that time, the first accused using a wooden log and the second accused using a brick, assaulted the deceased over his stomach, legs and backside repeatedly; that on seeing this, the de-facto complainant, namely, the mother of the deceased and one Duraisamy tried to prevent the accused; that the accused threatened them also and ran away from the scene of occurrence; that the de-facto complainant admitted her son, the deceased on 09.12.2019 at about 10.00 A.M., in the Government Hospital, Sirkali and that the deceased died on the next day i.e., 10.12.2019 at 9.15 A.M., while he was under treatment.

3. A complaint was lodged by the de-facto complainant before the respondent on 10.12.2019, which was registered in Crime No.345 of 2019. Thereafter, a final report was filed and the prosecution examined 20 witnesses apart from marking 14 exhibits and two material objects. The trial Court, after taking up the case in S.C.No.52 of 2020, convicted and sentenced the petitioners/accused to suffer imprisonment for the offences as aforesaid.

4. We have heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent



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and also perused the materials available on record.

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5. It is to be noted that the alleged assault was on 08.12.2019 at 5.00 P.M. Whereas the deceased was admitted in the hospital only on the next day at 10.00 A.M. The deceased died on 10.12.2019. The complaint itself was lodged only on 10.12.2019. No complaint was lodged immediately after the assault. The prosecution failed to substantiate the motive by adducing cogent evidence. Taking into consideration the fact that the deceased died two days after the alleged assault and the complaint itself was lodged two days after the occurrence, this Court finds a prima facie case in favour of the petitioners for suspension of sentence.

6. However, the learned Additional Public Prosecutor, on instructions, submitted that the petitioners may pose a threat to the witnesses who have given evidence in this case. Therefore, the learned Additional Public Prosecutor states that the petitioners may be released on bail subject to stringent conditions to stay away from the place of occurrence.

7. In view of the above, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the



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petitioners is suspended and they are granted bail on the following

conditions:-

- (i) Each of the petitioners 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, Sirkali.
- (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 petitioners shall stay in Chennai and report before D-1 Triplicane Police Station twice a week i.e., on Monday and Friday at 5.00 p.m., and shall not leave Chennai to their native place, until further orders from this Court.

(S.S.S.R.,J.) (S.M.,J.)
03.11.2023

SS

To

1. The Additional District & Sessions Judge, Mayiladuthurai
2. The Judicial Magistrate, Sirkali
3. The Inspector of Police, Anaikaran Chathiram Police Station, Mayiladuthurai District
4. The Inspector of Police, D-1 Triplicane Police Station, Chennai
5. The Superintendent, Central Prison, Cuddalore
6. The Public Prosecutor, High Court, Madras



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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

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