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CRL.M.P.NO.10734 OF 2023
IN CRL.A.NO.530 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 14 / 09 / 2023

ORDER PRONOUNCED ON: 27 / 09 / 2023

CORAM:

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

CRL.M.P.NO.10734 OF 2023

IN

CRL.A.NO.530 OF 2022

Subesh

... Petitioner / Appellant /
Accused No.5

Versus

The State
Represented by The Inspector of Police
Yercaud Police Station
Salem District.
(Crime No.52/2016)

... Respondent / Respondent/
Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the execution of the sentence passed by an order dated 13.12.2021 made in S.C.No.279 of 2017 by the learned Sessions Judge, Magalir Neethimandram (Mahila Court) Salem and enlarge him on bail pending disposal of the above appeal.



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For Petitioner : Mr.R.Nalliyappan
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

R.SAKTHIVEL, J.

This 'Criminal Miscellaneous Petition' (hereinafter 'Crl.M.P.' for the sake of brevity and convenience) has been filed under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] with a prayer for suspension of sentence passed vide the judgment dated 13.12.2021 in S.C.No.279 of 2017 on the file of the Sessions Judge, Mahalir Neethimandram (Mahila Court) Salem (hereinafter be referred as 'Trial Court' for the sake of convenience and clarity).

2. The petitioner in this Crl.M.P. is the 'fifth accused' ['A5' for the sake of convenience and brevity] in the Trial Court.

3. The case of the prosecution is that one Ashok Kumar (P.W.1) borrowed a sum of Rs. 1,50,000/- from one Krishnamoorthi – 'first accused' ['A1' for the sake of convenience and brevity] in the year 2011 for his



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younger sister's marriage by depositing title deeds relating to his properties.

The properties as described by the prosecution is 1092 sq.ft. of land situated near bus stand and 69 cents of land situated at Mel Alagapuram, both in Yercaud, Salem District. At the time of borrowing money, A1 obtained signature from P.W.1 in blank promissory notes. P.W.1 repaid the loan in three installments. However, post repayment, A1 returned two original sale deeds and patta alone but did not return blank promissory notes said to have been obtained from P.W.1. It is the further case of the prosecution that A1 introduced himself as an Advocate and that he is presently working as Reader in Sub Court, Sankari, Salem District. It is also the case of the prosecution that P.W.1 got back his documents from A1 through one Rex Stalin (P.W.6). It is the further case of the prosecution that when P.W.1 requested A1 to return the blank promissory notes obtained from him at the time of borrowing, A1 stated that the promissory notes have been given to his younger sister at Chennai and assured that he will get them back but did not do so. Later, by using the said documents obtained from P.W.1, A1 filed Original Suit in O.S.No.70 of 2017 against P.W.1 in Sub Court, Sankari.



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4. The alleged occurrence which is the basis of this Sessions

Case happened on 11.03.2016 at about 09.30 p.m., where A1 is said to have gone over to P.W.1's new house where construction work was going on. It is the case of the prosecution that A2 to A5 accompanied A1 on the date of occurrence and kidnapped P.W.1 and P.W.1's mother (P.W.2) in a white colour Car, with an intention to obtain their signatures in blank stamp papers. While kidnapping, A2 assaulted Ashok Kumar (P.W.1) and his mother Vasanthi (P.W.2) with an Iron pipe and caused them injuries. A3 drove the Car. A1, A2, A4 and A5 assaulted them and tortured them to affix their signatures in the blank stamp papers. As planned, they obtained their signatures and then dropped them off in a nearby place i.e., Hasthampatty on 13.03.2016 in the early morning. On 13.03.2016 at about 1.00 p.m., P.W.1 and P.W.2 went to Government Hospital, Yercaud and took first aid. Thereafter, they went to Government Mohan Kumaramangalam Medical College Hospital, Salem, where P.W.1 gave Ex-P.1 written complaint to P.W.10. Based on Ex-P.1 complaint, investigation started and ended in a positive final report against 5 accused *inter alia* under Sections 147, 452, 364(A), 506(ii), 379,



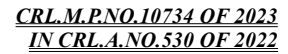
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148, 120B, 384 and 342 of 'The Indian Penal Code (45 of 1860)' ['IPC' for the sake of convenience and brevity] including the petitioner herein.

5. The details pertaining to the charges and the conviction of A5 in the Trial Court are as follows:

Sl.No.	Provision of law under which conviction was made	Sentence
1.	120-B IPC	Rigorous Imprisonment for life along with fine of Rs.1000/-, in default of payment of fine the accused has to undergo additional rigorous imprisonment for 1 year.
2.	147 IPC	Two years rigorous imprisonment.
3.	364-A IPC	Rigorous Imprisonment for life along with fine of Rs.1000/-, in default of payment of fine the accused has to undergo additional rigorous imprisonment for 1 year.
4.	384 IPC	Three years rigorous imprisonment.
5.	323 IPC (2 counts)	One years rigorous imprisonment for each count.
6.	342 IPC	One year rigorous imprisonment.
7.	506(ii) IPC	Seven years rigorous imprisonment.

The above sentences are to run concurrently and the period of sentence already undergone by A5 in custody from 11.08.2016 to 16.09.2016 was ordered to be given set off under Section 428 Cr.P.C.



7. Per contra, Mr.A.Gokulakrishnan, learned Additional Public
submitted that the Trial Court convicted and sentenced the
5 and others, after considering the evidences and materials



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available on record passed the judgment. He further submitted that the 'theory of presumption of innocence' is not available in the appeal since already a judicial mind has weighed evidence and considered the facts and circumstances of the case and passed the judgment. Accordingly, he prayed to dismiss the present petition.

8. This Court has carefully considered both side submissions and perused the case file.

9. Section 364-A of IPC reads as follows:

'364-A. Kidnapping for ransom etc. - Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or (any foreign State or International inter-governmental organisation or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life and shall also be liable to fine.'



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10. Section 120-B of IPC is criminal conspiracy which is a standalone offence. It was submitted that the entire occurrence happened with a view to obtain thumb impression and signatures in blank papers from P.W.1. The said papers have been recovered and marked as Ex.P2 series and Ex.P3 series before the Trial Court. It was also pointed out that P.W.1 has deposed that, a Suit in O.S.No.70 of 2017 has been filed using the documents obtained by force on 11.03.2016. This Court does not propose to re-appreciate the evidence but only propose to extract the relevant portion from the judgment. The learned Sessions Judge in paragraph 28 of the judgment has stated as follows:

'28....PW1 has further contended that later by using the said documents obtained from him, A1 filed the original suit in O.S.70/2017 against him at the sub court, Sankari and the same is pending. PW1 has contended that A1 is also working only in the said court.'

11. It was pointed out that the plaint in O.S.No.70 of 2017 has not been marked as exhibit. It was also pointed out that the blank papers in which signatures are said to have been obtained on 11.03.2016 have been



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recovered and marked as Ex.P2 and Ex.P3 series. Therefore, according to learned counsel for petitioner, no satisfactory evidence is available on record to prove the motive for the crime.

12. Admittedly, the plaint in O.S.No.70 of 2017 on the file of Sub Court, Sankari has not been marked as exhibit in this case. This Court has verified the case status of O.S.No.70 of 2017 through 'e-courts website'. On verifying the same, it reveals the fact that the suit in O.S.No.70 of 2017 on the file of Sub Court, Sankari has been filed by one Anusuya against R.Ashok Kumar (P.W.1) and he was set *exparte*, thereafter, the said Suit was dismissed for default on 08.11.2022. It is to be noted that the judgment i.e., conviction / sentence of the Trial Court vide S.C.No.279 of 2017 was passed on 13.12.2021 after P.W.1 was set *exparte* in the civil Suit. This Court embarked upon this exercise only as a matter of abundant caution to make sure that nothing is missing the eye.

13. Reverting to the conviction and sentence of the Trial Court, this Court finds that there is a missing link as regards motive, as rightly



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pointed out by the learned counsel for petitioner. The reason is, the papers in which the thumb impression and signatures are said to have been obtained by the accused have been marked as Ex.P2 series and Ex.P3 series in the Trial Court. Therefore, those papers could not have been the basis for the civil suit said to have been filed on the basis of promissory notes which were allegedly not returned. That is an entirely different cause of action and that cannot become a motive for the offence / charges which have resulted in conviction and sentence. Furthermore, the argument advanced by the learned counsel for petitioner regarding Section 364-A IPC come across as a strong argument as it is not a case where (even according to the prosecution) the accused who is alleged to have kidnapped, abducted and compelled the person to do the act is relatable to the motive i.e., O.S.No. 70 of 2017. Assuming section 364-A IPC is attracted and assuming that the accused had compelled P.W.1 to sign and fix thumb impression in blank papers and if it is tested by saying that Section 364-A IPC is attracted, these papers were recovered and marked as Ex.P2 and Ex.P3 series and therefore, those papers obviously could not have been the basis of O.S. No.70 of 2017. At the risk of repetition, this Court



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deems it appropriate to say that plaint has not been marked as exhibit in the Trial Court.

14. The learned Sessions Judge passed the conviction and sentence under Section 120-B of IPC. Section 120-B of IPC is a standalone offence. There may not be any two views in this regard. The learned counsel for the petitioner contented that there is no evidence available on record to prove the offence under Section 120-B of IPC. This Court is of the view that there is no apparent reason to reject the arguments of the petitioner at this stage.

15. If the two charges i.e., charges under Sections 364-A and 120-B of IPC are erroneous, the consequence stated in Section 464 of Cr.P.C. would be attracted and therefore, the two life sentences may not withstand in the appeal under Section 374(2) Cr.P.C.

16. It is to be noted that there is no independent witness available on record to connect the petitioner / A5 in this case. Further, the fact that P.W.1, P.W.2 and P.W.6 are interested witnesses.

17. It is apposite to mention that Hon'ble Supreme Court in



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Omprakash Sahni vs Jai Shankar Chaudhary and Another reported in
(2023) 6 SCC 123 after referring many case laws held in para 33 as follows:

'33.Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.'

In the light of the above dictum, this petition is being considered.

18. It is to be noted that bail was granted by the Hon'ble



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Division Bench of this Court to the co-accused namely A3 on medical grounds vide order dated 28.02.2022 in Crl.M.P.No.363 of 2022 in Crl.A.No.31 of 2022 and also bail was granted to A1 by this Court on 08.06.2023 in Crl.M.P.No.3078 of 2023 in Crl.A.No.77 of 2022. This Court is informed that nothing untoward had happened after granting bail to the co-accused namely A1 and A3. It is to be noted that the petitioner is in judicial custody for the past 21 months. Considering the facts and circumstances of the case and also considering the fact that the co-accused were granted bail by this Court, this Court is inclined to allow this Crl.M.P. and grant bail to the petitioner / A5, however with conditions to be stated infra.

19. Considering the facts and circumstances of the case and the points projected by the learned Additional Public Prosecutor, while acceding to the suspension of sentence prayer, this Court deems it appropriate to impose certain conditions with a rider that it is obviously open to the petitioner to seek relaxation of the conditions after compliance of the same for a length of time that would be acceptable for the Court before which



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relaxation is moved.

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20. In view of the above reasoning, this Court is inclined to allow the petition, however, with the following conditions:

(i) The sentence of imprisonment passed against the petitioner/A5 vide judgment dated 13.12.2021 in S.C.No.279 of 2017 on the file of Sessions Court, Magalir Neethimandram (Mahila Court), Salem (Trial Court) alone is suspended pending main appeal, subject to conditions stated infra in the sub-paragraphs to follow;

(ii) The petitioner/A5 shall deposit the fine amount before the Trial Court, if not already deposited;

(iii) The petitioner/A5 shall execute a bond



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for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties one of whom should be a blood relative (each for a likesum) to the satisfaction of Sessions Judge, Magalir Neethimandram (Mahila Court), Salem (Trial Court);

(iv) The petitioner/A5 shall remain/reside within the Revenue District of Kancheepuram, furnish the temporary address to the Additional District Judge, Kancheepuram and shall not leave the Revenue District of Kancheepuram without prior permission from the Additional District Judge, Kancheepuram;

(v) The petitioner shall report before the Additional District Judge, Kancheepuram every Monday at 10.30 a.m. until further orders;

(vi) If the petitioner moves a petition under



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section 317 Cr.P.C. for any reason, it will be open to the learned Additional District Judge, Kancheepuram to consider the same on its own merits and in accordance with law untrammelled by this order.

21. Captioned Crl.M.P. is disposed of in the aforesaid manner with the aforesaid directives.

(M.S., J.)

(R.S.V., J.)

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SPP/TK

Neutral citation (Upload)

PS: Registry to forthwith communicate this order to Jail Authorities in Central Prison, Coimbatore.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

SPP/TK

PRE-DELIVERY ORDER MADE IN
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