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Crl.M.P.No.13128 of 2023
in Crl.A.No.355 of 2021

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

[Order of the Court was made by **S.S. SUNDAR, J.**]

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners/accused by the II Additional District and Sessions Judge, Tiruppur, in S.C.No.133 of 2015, by judgment, dated 16.04.2021, and to enlarge the petitioners/accused on bail pending disposal of the above Criminal Appeal.

2.It is the case of the prosecution that the petitioners/A1 and A2 are friends; that the deceased and A1 are friends and both were working together in CRI Pump Company; that A1 had contact with one lady; that the deceased frequently asked A1 to give the phone number of the lady, but the same was refused; that the deceased started spreading about the relationship of A1 with that lady to many people; that on 28.10.2013 at about 7.00 p.m., with an intention to murder the deceased, A1 and A2 assaulted the deceased with a stone and burnt the deceased and finally,



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threw the body of the deceased in the well situated at Thulukkankattu Thottam at Periyapalayam Village; that the accused had also stolen the gold jewels and one cell phone from the deceased. Hence, the case.

3.The case was tried by the learned II Additional District and Sessions Judge, Tiruppur, in S.C.No.133 of 2015, and ultimately, the petitioners/accused were convicted and sentenced as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 302 IPC	Life imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six years simple imprisonment each

4.Challenging the above conviction and sentence, the petitioners/accused have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

5.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

6.It is seen from evidence that the body of the deceased was found few days after the murder. Learned counsel for the petitioner states that



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there is no evidence even to confirm that the body which was found from the well is the body of the deceased. It is further stated that the recovery was also disbelieved by the trial Court. Therefore, the learned counsel submitted that the conviction was purely based on circumstantial evidence. It is pointed out that the trial Court has not considered several infirmities in the evidence and that the chain is not complete to come to the conclusion that the murder was committed only by the accused.

7.This Court, at this stage is not inclined to appreciate the evidence. The submissions of the learned counsel for the petitioner about the identity of the body may not be accepted in view of the evidence of the Doctor who did autopsy. The fact that A1 had a motive is established. P.W.5, who was working at TASMAC, deposed that A1 and the deceased came down to the TASMAC shop on 28.10.2013 at about 10.00 a.m. The contention of the learned counsel for the petitioners that, merely because P.W.5 did not inform this earlier may not be relevant in this case, as the death of the deceased was confirmed only after postmortem of the body. This Court finds no serious infirmity in the evidence. Having regard to the fact that the homicide is proved and that it



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is a gruesome murder, this Court is unable to find a *prima facie* case to conclude that the petitioner has fair chance to succeed in the appeal. Hence, this Court is not inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, this Criminal Miscellaneous Petition is dismissed.

(S.S.S.R., J.) (S.M., J.)
23.11.2023

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