



Crl.MP.No.16423 of 2023
in Crl.A.No.1115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.16423 of 2023
in Crl.A.No.1115 of 2023

Ayyavu

... Petitioner/A2

Vs.

State represented by
The Inspector of Police,
Thoppur Police Station,
Crime No. 200/2019

... Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C., to suspend the sentence and conviction imposed against the petitioner/A2/Appellant by judgment dated 08.08.2023 in S.C.No.1 of 2021 passed by the learned Additional District and Sessions Judge, Dharmapuri, enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

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For Petitioner : M/s.C.Emalias
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed against the petitioner, by the Additional District and Sessions Judge, Dharmapuri, in S.C.No.1 of 2021, dated 08.08.2023, and enlarge him on bail, pending disposal of the above Criminal Appeal.

2. The Additional District and Sessions Judge, Dharmapuri, in S.C.No.1 of 2021, convicted the accused and sentenced him as follows:

Accused No.	Offence	Sentence Imposed
A2	302 r/w 114 of IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo 2 years rigorous imprisonment.
	235(2) of Cr.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo 2 years rigorous imprisonment.
The sentences imposed were directed to run concurrently.		



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3. Challenging the above conviction and sentence, the petitioner, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4. Heard M/s.C.Emalias, learned Counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that on 15.07.2019, due to previous enmity with regard to a property dispute, all the accused persons formed an unlawful assembly, abused the deceased, who is none else than the son of the petitioner and brother of the first accused and attacked him by using lethal weapons; that A1 indiscriminately cut the deceased on his head resulting his death and the allegation against the petitioner is that he instigated his son/A1 to commit this crime. Based on a complaint, case was registered in Thoppur, Police Station, Dharmapuri in Crime No.200 of



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2019 for the offences under Sections 302, 324 of IPC on 15.07.2019 at about 4.00 P.M., even though the occurrence took place at 3.00 P.M.

6. It is seen on perusal of the records that the prosecution had examined 17 witnesses to prove their case. P.W.1 is the Village Administrative Officer before whom the first accused appeared after the occurrence and alleged to have given a confession. P.W.2 to P.W.5 are eye-witnesses to the occurrence. The witnesses stated about the attack made by A1 on the deceased. The overt act attributed to the petitioner is that he instigated A1 to cause the death of the deceased. It is P.W.1's version that A1 appeared before him at 3.30 p.m. on 15.07.2019, thereafter, P.W.1 had lodged the complaint before the respondent marked as Ex.P1. It is to be noted that in the said complaint, there is no reference to the alleged involvement of the petitioner. It is also seen from the evidence that P.W.2 to P.W.5, the relatives of the deceased and the petitioners had dispute with regard to a property.



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7. Considering the fact that the petitioner is aged about 75 years and no overtact has been attributed to him, that P.W.2 to P.W.5 were interested witnesses and had a grudge against the petitioner and that false implication cannot be ruled out especially in view of the fact that the alleged role of the petitioner is not stated in the complaint, we are inclined to Suspend the Sentence imposed on the petitioner herein.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner is suspended on the following conditions:

- (i) The petitioner 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 District and Sessions Judge, Dharmapuri;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety



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bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iii) The petitioner 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 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.

(S.S.S.R., J.) (S.M., J.)
28.11.2023

Internet : Yes

Index : Yes / No

Note to office:

Issue order copy by 01.12.2023

Upload the order copy forthwith



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- To
- 1.The Additional District and Sessions Judge,
Dharmapuri,.
 - 2.The Inspector of Police,
Thoppur Police Station,.
 - 3.The Superintendent,
Central Jail Vellore.
 - 4.The Public Prosecutor,
High Court, Madras.



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

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