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Crl.M.P.Nos.17444 and 11863 of 2023
in Crl.A.Nos.962 and 1030 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2023

PRONOUNCED ON : 16.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.Nos.17444 and 11863 of 2023

in

Crl.A.Nos.962 and 1030 of 2022

1.Kalpana ... Petitioner in Crl.M.P.No.17444 of 2023/A1

2.Dinesh @ Dinesh Babu ... Petitioner in Crl.M.P.No.11863 of 2023/A2

Vs.

State Rep. by

The Inspector of Police,

Panruti Police Station,

Cuddalore District.

Cr.No.492/2013.

Crl.M.Ps

...Respondent/Complainant in both the

Common Prayer:- Criminal Miscellaneous Petitions filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed upon the petitioners/A1

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and A2 by the learned Principal District and Sessions Judge, Cuddalore dated 27.07.2022 in S.C.No.122 of 2014 and enlarge them on bail pending disposal of the above appeals.

For Petitioner in

Crl.M.P.No.17444/2023 : Mr.N.R.Elango, Sr. Counsel

Crl.M.P.No.11863/2023 : Mr.R.Karthikeyan

For Respondent in

both Crl.M.Ps : Mr.S.Rajkumar

Additional Public Prosecutor

COMMON ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

These Crl.M.P.Nos.17444 and 11863 of 2023 in Crl.A.Nos.962 and 1030 of 2022 have been filed to suspend the sentence imposed on the petitioners / A1 & A2 respectively, by the learned Principal District and Sessions Judge, Cuddalore, in S.C.No.122 of 2014, by the judgment dated 27.07.2022, and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

2.The learned Principal District and Sessions Judge, Cuddalore in



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S.C.No.122 of 2014, convicted and sentenced the petitioners herein/A1 &

A2, as follows :

Petitioner (accused)	Offence Section	under	Sentence imposed
A1	120(B) r/w 302 IPC		To undergo life imprisonment and to pay a fine of Rs.1,000/- each in default to undergo six months simple Imprisonment.
	114 r/w 302 IPC		To undergo life imprisonment and to pay a fine of Rs.1,000/- each in default to undergo six months simple Imprisonment.
	201 r/w 302 IPC		To undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- each in default to undergo three months simple Imprisonment.
	203 r/w 302 IPC		To undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- each in default to undergo three months simple Imprisonment.
A2	120(B) r/w 302 IPC		To undergo life imprisonment and to pay a fine of Rs.1,000/- each in default to undergo six months simple Imprisonment.
	201 r/w 302 IPC		To undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- each in default to undergo three months simple Imprisonment.



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	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- each in default to undergo six months simple Imprisonment.
The period of sentences imposed above are directed to run concurrently.		

3.Challenging the above conviction and sentence, the petitioners, who are arrayed as A1 and A2, have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present miscellaneous petitions.

4. The case of the prosecution is that A1 is the wife of the deceased and she had illicit intimacy with A2; that the deceased came to know about the illicit relationship, which lead to his frequent quarrels with A1; that therefore, A1 and A2 hatched a conspiracy to do away with the deceased; that A2 requested his friend one Murali, who turned into an approver [PW1] to execute the plan; that on 01.06.2013, at about 7.45pm while the deceased and A1 were going in their bike on the Cuddalore-Panruti Road, near the land belonging to one Ramalingam next to T.Rasappalayam Bus Stand; that A1 pursuant to the conspiracy gave information to A2 through a mobile message about their whereabouts; that A2 and the approver [PW1] went in another bike to the said place; that they stopped the vehicle of the deceased;



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that A2 stabbed the deceased on his neck and the approver stabbed on the hands of the deceased; and thereby caused the death of the deceased.

5.(a) Mr.N.R.Elango, learned senior counsel appearing on behalf of A1/petitioner in Crl.M.P.No.17444 of 2023 submitted that the entire case rests on the evidence of approver [PW1] and the extra-judicial confession given by A1 to the Village Administrative Officer [PW7]. The learned senior counsel submitted that the extra-judicial confession cannot be believed as it is neither voluntary nor truthful. It is the case of the prosecution that A1 appeared before the Village Administrative Officer [PW7] on 15.06.2023 and gave the extra-judicial confession. However, PW7 in the cross examination would admit that he went to the police station on the 14th and 15th of June 2013 and he came to know that both A1 and the approver [PW1] were in police custody at that point of time. In the light of the said evidence, the learned senior counsel submitted that the extra-judicial confession of A1 said to have been recorded on 15.06.2013 by the Village Administrative Officer [PW7] is highly doubtful.



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(b). The learned senior counsel further submitted that the approver [PW1] also cannot be believed as he made several improvements in his deposition before the Court as admitted by PW31, the Investigation Officer in the case. The learned senior counsel also pointed out to the material improvements made by PW1/approver in the deposition, would improbabalise the involvement of A1.

(c). The learned senior counsel further pointed out that it is the prosecution case that on the messages sent by A1, the A2 and PW1 followed the vehicle of the deceased in another vehicle. However, the prosecution had failed to link the phone numbers from which the messages were sent, as that belonging to A1. Further, PW17, who had retrived the CCTV footages to show that A1 and deceased went in a two-wheeler had not exhibited the same to prove that A2 and PW1 followed them in another vehicle. Pointing out to the above infirmities, the learned senior counsel prayed for suspension of sentence to the petitioner/A1.

8. Mr.R.Karthikeyan, learned counsel for A2/petitioner in



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Crl.M.P.No.11863 of 2023, submitted that the evidence of the approver [PW1] apart from material improvements cannot be believed as he had attempted to exonerate himself and attributed overt acts to A2. According to PW1, A2 inflicted multiple injuries with knife on the neck of the deceased. However, the evidence of the postmortem Doctor [PW20] would show that there was only one 'spike injury' on the neck of the deceased which belies PW1's version and the prosecution case. Therefore, the learned counsel prayed to suspend the sentence imposed on the petitioner/A2.

9. The learned Additional Public Prosecutor *per contra* submitted that the prosecution has established the case beyond reasonable doubt; that PW1's evidence is natural and cogent, coupled with extra-judicial confession of the A1; that the petitioners have not made out any *prima facie* case for suspension of sentence; and prayed for dismissal of the petitions.

10. We have considered the rival submissions carefully. Considering the fact that the approver [PW1] has made material improvements as



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admitted by the Investigation Officer [PW31]; the fact that the Village Administrative Officer [PW7] admitted that he came to know that A1 and PW1 were in the custody of the police on the 14th and 15th of June 2013 and therefore, the recording of the extra-judicial confession of A1, is highly doubtful; the fact that there is material contradiction between the evidence of PW1 and the medical evidence; also the fact that the petitioners/A1 and A2 are in judicial custody from 27.07.2022; and that the appeal is not likely to be taken up for hearing in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioners herein.

11. Accordingly, this criminal miscellaneous petitions stand **allowed** and the sentence of imprisonment imposed on the petitioners (A1 and A2) is suspended on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Principal District and Sessions Judge, Cuddalore;



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(ii) The petitioners and 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 card or Bank pass Book and mobile numbers to ensure their identity;

(iii) The petitioners 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 they are not able to appear before the trial Court on any day, they 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.)
16.11.2023

Internet : Yes
Index : Yes / No
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Note to office:
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To

1. The Principal District and Sessions Judge,
Cuddalore.

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2. The The Inspector of Police,
Panruti Police Station,
Cuddalore.

3. The Superintendent,
Central Prison,
Cuddalore.

4. The Public Prosecutor,
High Court, Madras.



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Pre-delivery common order in
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