



WEB COPY



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM :

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

Crl.M.P.Nos.369 and 169 of 2023
in
Crl.A.Nos.16 and 34 of 2023

Kesavan ... Petitioner in
Crl.M.P.No.369 of 2023

Vijay ... Petitioner in
Crl.M.P.No.169 of 2023

Vs.

State rep. By
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.

... Respondent in both
petitions

Criminal Miscellaneous Petitiona filed under Section 389(1)
Cr.P.C. to suspend the sentence passed by the II Additional District
and Sessions Judge, Salem in S.C. No.343 of 2013 dated
27.07.2022 and to enlarge the petitioners on bail pending disposal
of the criminal appeal.



WEB COPY



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

For Petitioner : Mr.T.N.Rangesh Kanna
in Crl.M.P.No.369 of 2023

Mr.A.Abdul Lathif
in Crl.M.P.No.169 of 2023

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor
in both petitions

COMMON ORDER

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

These Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed by the II Additional District and Sessions Judge, Salem in S.C. No.343 of 2013 dated 27.07.2022, and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

2. The learned II Additional District and Sessions Judge, Salem in S.C. No.343 of 2023, has convicted and sentenced the petitioners/A2 and A3 as follows :

<i>Offence for which Convicted</i>	<i>Sentence</i>
302 r/w 34 IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment

3. Challenging the above conviction and sentence, the



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

petitioners, who are arrayed as A2 and A3, have filed the above Criminal Appeals and they are seeking suspension of sentence and bail in the present miscellaneous petitions.

4. The case of the prosecution is that the deceased by name Govindaraj and witness one Nagaraj were working as servants at Anna Petrol Bunk at Pappalapatti Village, Sankari Taluk. On 08.03.2013, accused 1 to 3 came to the said petrol bunk for buying petrol for the two wheeler driven by the first accused. The first accused asked the witness Nagaraj who was on duty to supply petrol for a sum of Rs.30/- for his motor bike. The said Nagaraj loaded petrol only for a sum of Rs.29.55 which is lesser to the sum of Rs.30/- paid by the first accused. Accused 1 to 3 questioned Nagaraj for the short supply and in this connection, there was some quarrel. The deceased also came to the rescue of the witness Nagaraj and justified the conduct of witness Nagaraj. It is the further case of the prosecution that on the same day at about 11.00 p.m., when the deceased went to Usharani Hotel along with the witness Mohan, accused 1 to 3 with an intention to cause death of the deceased, voluntarily and repeatedly assaulted the deceased on his face and chest with their hands and the first accused who joined A2 and A3 punched the deceased on his face



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

and due to that, the deceased suddenly fell down on the tar road.

WEB COPY

5. Based on the evidence of P.W.8 Dr.Nakkeeran and the post mortem certificate, the Trial Court came to the conclusion that the deceased died due to head injury sustained by him when he fell down. Based on the statement of the eye witnesses and the witnesses who have spoken about the first incident, the Trial Court came to the conclusion that the accused have committed the crime of murder and convicted them and sentenced to life.

6. Though the Trial Court came to the conclusion that the prosecution has proved the case beyond all reasonable doubts, the learned counsel for the petitioners pointed out several factual aspects to convince us that the accused have not committed the serious offence of murder and they have no intention to commit such murder. This Court finds that the deceased sustained injury on his head when he fell down at the time of commotion.

7. This Court finds that the motive alleged by the prosecution is weak. Considering the nature of overt act, the nature of injuries suffered by the deceased and the fact that a scuffle at the time of occurrence cannot be ruled out, this Court finds a prima facie case



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

in favour of the accused for suspension of sentence. Considering the fact that the petitioners are in incarceration for a period of more than fifteen months and the appeals are not likely to be taken up for hearing in the near future, we are inclined to suspend the sentence.

8. Accordingly, these Criminal Miscellaneous Petitions stand **allowed** and the sentence of imprisonment imposed on the petitioners is **suspended** and the petitioners are granted bail on the following conditions:

- (i) Each of the petitioner 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 II Additional District and Sessions Judge, Salem.
- (ii) 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; and



WEB COPY



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

(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 Appeals 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 their absence, as directed by the Trial Court.

(S.S.S.R., J.) (S.M., J.)
30.10.2023

Index : Yes / No
Neutral Citation: Yes/No
mmi

To

- 1.The II Additional District and Sessions Judge,
Salem.
- 2.The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023

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

mmi

**Crl.M.P.Nos.369 and 169 of 2023
in Crl.A.Nos.16 and 34 of 2023**

30.10.2023