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*Crl.M.P.No.19502 of 2022
in Crl.A.No.1287 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.19502 of 2022

in

Crl.A.No.1287 of 2022

1.Nagarajan

2.Kalaimathi

(along with female hand child

Kanisha Sri, 3 years)

.. Petitioners/Accused 1 & 2

Vs.

State rep. by

The Inspector of Police,

Poraiyar Police Station,

Mayiladuthurai District.

(Crime No.102 of 2019)

.. Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) & (3) of Cr.P.C to suspend the sentence made in Sessions Case No.136 of 2019 on the file of Additional District and Sessions Judge, Mayiladuthurai dated 28.09.2022 and grant bail to the petitioners / Accused No.1 & 2 pending disposal of the criminal appeal.



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For Petitioners : Mr.D.Veerasekharan
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.NIRMAL KUMAR, J.**]

This Criminal Miscellaneous Petition has been filed by the petitioners/accused 1 and 2, seeking suspension of sentence of imprisonment imposed by the learned Additional District and Sessions Judge, Mayiladuthurai by judgment dated 28.09.2022 made in S.C.No.136 of 2019 and enlarge the petitioners/appellants on bail pending disposal of the above Criminal Appeal.

2. The petitioners/appellants herein is the accused in S.C.No.136 of 2019 on the file of the learned Additional District and Sessions Judge, Mayiladuthurai. They were found guilty for the offences punishable under Sections 294(b) and 302 of I.P.C. and they have been convicted and sentenced as under:



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Petitioner /Accused	Conviction	Sentence
Petitioner/Accused-1	Section 294(b) of I.P.C.	to pay a fine of Rs.1000/-, in default to undergo one month rigorous imprisonment.
Petitioners/Accused 1 and 2	Section 302 of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.10,000/- each, in default to undergo six months rigorous imprisonment each.
Total fine imposed against the petitioners/Accused is Rs.21,000/-		

3. Challenging the above conviction and sentence, the petitioners/accused 1 and 2 have filed Crl.A.No.1287 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Mr.D.Veerasekharan, learned counsel on record for petitioners sought leave of this Court to withdraw the suspension of sentence prayer insofar as the first petitioner/A-1 is concerned. Learned counsel on record has made an endorsement in the case file and a scanned reproduction of the same is as follows:



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27-04-2023
As per Petitioner No.1
/ Accused No.1 in the
Crl.M.P.No.19502/2022
may be permitted
to Withdraw at present
and revive the same
afterwards.
A. Subramanian
27/04/2023
counsel for petitioner

5. In view of the above submission and endorsement made by the learned counsel for petitioners, **this Criminal Miscellaneous Petition is disposed of as withdrawn/closed insofar as first petitioner/A-1 is concerned** albeit preserving all the rights and contentions of the first petitioner/A-1 to pursue his remedies in this Court or any other appropriate forum.

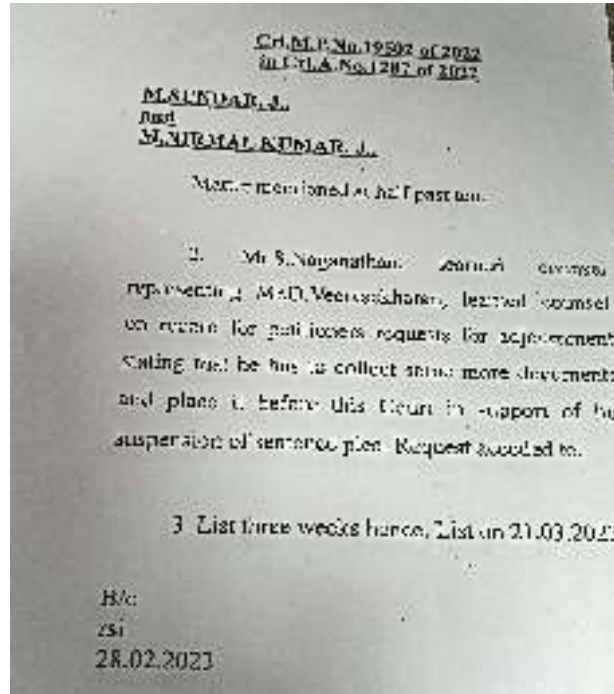
6. The earlier proceedings made on 28.02.2023 reads as follows:



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7. We are now informed by Mr.D.Veerasekharan, learned counsel for petitioners that further documents were required only with regard to first petitioner/A-1 and therefore we are now considering the plea of second petitioner/A-2.

8. The case of the prosecution is that the deceased Sathish Kumar is the sister's son of P.W.1. On 12.05.2019 at about 12.00 noon, there was a quarrel with Sathish Kumar and A-1/father in law of Sathish Kumar and



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A-2/wife of Sathish Kumar. At that time A-1 had inflicted a stab injury on the Sathish Kumar's left thigh and A-2 hit him using brick on his forehead. The injured Sathish Kumar was taken to Mayiladuthurai Government Hospital where he succumbed to the injuries. Thereafter a complaint lodged with P.W.12/Sub Inspector of Police, who registered Ex.P7/F.I.R. In Crime No.102 of 2019. Thereafter, PW13/Investigation Officer visited the scene of occurrence, examined the witnesses, prepared mahazar and seized material objects (M.Os.), inquest conducted and body was sent for post-mortem. P.W.11/Post-mortem Doctor gave report/Ex.P6, on completion of investigation charge sheet filed.

9. Before the trial Court, on the side of the prosecution, 14 witnesses examined as P.W.1 to P.W.14 and marked 11 documents as Exs.P1 to P11 and marked 4 material objects as M.O.1 to M.O.4. On the side of the defence, no witnesses examined, but marked one document Ex.D1. On



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conclusion of the trial, the petitioners were convicted as stated above, against which, the present appeal and suspension of sentence petition filed.

10. The contention of the petitioner is that the alleged eye witnesses in this case are P.W.1 to P.W.3. P.W.1 is the uncle of deceased, P.W.2 is the Aunt and wife of P.W.1. P.W.3 is a local resident known to the deceased. From the evidence of P.W.1, P.W.2 and P.W.3, it is seen that prior to the alleged attack there was a wordy quarrel. Even prior to the marriage there was some dispute between A-2 and the deceased and a complaint was lodged before the Sembanarkovil Police Station. The deceased appeared before the police and gave an undertaking Ex.D1 on 29.12.2018 thereafter the dispute got resolved. After the marriage the dispute continued and the deceased constantly harassed A-2 and neglected, A-2 were living separately. From the evidence of P.W.1 to P.W.3 it is clearly seen that as far as the second petitioner is concerned, she has not caused the fatal injury. In this case the



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post-mortem Doctor/P.W.11 stated that injury on the forehead is a simple injury, which might occur due to fall. PW.3 admits that there was wordy quarrel between the deceased and A-2 and thereafter, exchange of blows. The recovery of M.O.1 is highly doubtful. P.W.8 admits that Ex.P2/Observation Mahazar and Ex.P3/Seizure Mahazar signed in the police station. In this case, the evidence of P.W.1 to P.W.3 are contradictory with each other, highly doubtful. Learned counsel submitted the ocular and medical evidence are contradictory to each other as seen from the available evidence and materials. The second petitioner cannot be convicted under Section 302 I.P.C. Further, the second petitioner has arguable points and fair chance of success in this appeal. Thus, he prayed for Suspension of Substantive Sentence of Imprisonment imposed on the second petitioner till the disposal of the appeal.

11. Learned Additional Public Prosecutor appearing for the respondent-Police objecting to bail application, submitted that in this case



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there are three eye witnesses. P.W.1 was present in the scene of occurrence , who had taken the deceased immediately after the attack to the Government Hospital, Mayiladuthurai where he succumbed to injuries. He further submitted that P.W.2 and P.W.3 corroborated the evidence of P.W.1. The Post-mortem Doctor confirms that the death was due to the injury sustained by the deceased. He fairly submitted that the overt act attributed to second petitioner/A-2 in this case is that she used the brick and hit the deceased on his forehead. He further submitted that there was a matrimonial dispute between A-2 and the deceased. Now, the petitioner/A-2 is with a baby in the prison. It is also submitted that the wife of A-1 and mother of A-2 is no more and no one is there to take care of the baby. His only apprehension is that the relatives of the deceased might cause harm. He further submitted that in this case all the witnesses supported the case of the prosecution and the trial Court on the evidence of witnesses P.W.1 to P.W.13 and materials Exs.P1 to P11 and MO1 to MO4, had rightly convicted the petitioners/accused. Hence, he



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opposed for grant of bail.

12. Considering the submissions and on a perusal of the materials, it is seen that it is not a case of premeditation. Prior to attack, there was a wordy quarrel and the overtact attributed to second petitioner/A-2 is, she used a brick, hit the deceased on his forehead, which is not the fatal injury. The post-mortem Doctor confirms that the fatal injuries sustained by the deceased is due to single stab injury on the left thigh. Further three year old baby is with the second petitioner/A-2 in the prison, the fight arose because of matrimonial dispute. There are infirmities in the evidence of P.W.1 to P.W.3.

13. Taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the Substantive Sentence of Imprisonment and grant bail to second petitioner/A-2 alone till the disposal of



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the appeal. Accordingly, **the Substantive Sentence of Imprisonment imposed on the second petitioner/A-2 alone is suspended till the disposal of the appeal and the second petitioner/A-2 is ordered to be enlarged on bail**, on condition that she shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Additional District and Sessions, Judge, Mayiladuthurai.

14. Further, the second petitioner/A-2 is directed to appear before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

(M.S.,J.) (M.N.K.,J.)
27.04.2023

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

rsi

Note: Issue Order Copy forthwith.



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To

- 1.The Inspector of Police,
Poraiyar Police Station,
Mayiladuthurai District.
- 2.The Judicial Magistrate No.II,
Mayiladuthurai.
- 3.The Additional District and Sessions Judge,
Mayiladuthurai.
- 4.The Superintendent,
Special Prison for Women,
Trichirapalli.
- 5.The Public Prosecutor,
High Court, Madras.



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