



CRL MP(MD) No.5399 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty First day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL MP(MD) No.5399 of 2023
IN
CRL A(MD) No.267 of 2023

1 GANESAMOOORHY

2 THAMBIDURAI

3 MANIKANDAN ... PETITIONERS/ APPELLANTS/ ACCUSED 1 TO 3

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
THIRUVAIYARU POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.45/2018).

... RESPONDENT/RESPONDENT/COMPLAINANT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed in SC No.2/2020 dt. on 14/3/2023 on the file of II Additional District and Sessions Judge, Thanjavur and enlarge the petitioner on bail pending disposal of the main Appeal.

PRAYER IN CRL.A(MD).267/2023:

Pleased to calling for the records relating to the conviction and sentence imposed by the trial Court by its judgment dated 14.03.2023 in S.C.No.2 of 2020 on the file of the II Additional District & Sessions Judge, Thanjavur and set aside the same, acquit the appellants.



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Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.ARUN PRASAD A, Advocate for the petitioners and of Mr.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by M.NIRMAL KUMAR, J.)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners by judgment dated 14.03.2023 passed in S.C.No.2 of 2020, on the file of the II Additional District and Sessions Judge, Thanjavur, and to enlarge the petitioners/ A1 to A3 on bail pending disposal of the above appeal.

2. The petitioners are arrayed as A1 to A3, in S.C.No.2 of 2020 before the II Additional District and Sessions Judge, Thanjavur and vide judgment dated 14.03.2023. They were convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- each, in default, to undergo simple imprisonment for one year for the offence under Section 302 I.P.C. Challenging the aforesaid conviction and sentence, the petitioners have filed CrI.A.(MD)No.267 of 2023 along with the instant Criminal Miscellaneous Petition seeking suspension of sentence and bail.

3. Heard Mr.A.Arun Prasad, learned counsel for the petitioners and Mr.RMS.Sethuraman, learned Additional Public Prosecutor appearing for the respondent/State.



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4. The case of the prosecution is that, on 06.02.2018 at 07.00 a.m., one Archana, Village Administrative Officer of Thiruchotruthurai Village [P.W.1] was informed over phone by one Vijayakumar, Village Assistant [P.W.13] that an unknown male dead body, aged about 28 years, was found at Odathurai North Bank of Kudamuruti River, Uppukachipetti Village Panchayat. She went to that place at 07.30 a.m. and saw a male body with injury on the neck, forehead and stab injuries on the chest. She enquired with the Villagers and identified the dead body as one of Navamani @ Rajadurai, S/o.Shanmugavel of Thiruvaiyaru. Thereafter, on the same day at about 09.00 a.m. she went to Thiruvaiyaru Police Station and lodged a complaint [Ex.P.1]. Aarthi, Sub-Inspector of Police [P.W.17] received the complaint from P.W.1 and registered Ex.P.18 F.I.R. in Crime No.45 of 2018 for the offence under Section 302 I.P.C. She submitted the original complaint and F.I.R. to the Judicial Magistrate Court, Thiruvaiyaru, through Selvamani, Head Constable [P.W.16] and submitted copies of F.I.R. to higher officials and to Thiruvaiyaru Circle Inspector, for investigation.

4.1. Thereafter, Sridhar, Inspector of Police [P.W.18], who took up investigation in Crime No.45 of 2018, visited the scene of occurrence, enquired the witnesses present in the scene of occurrence, recorded their statements and events by way of Mahazars. During investigation, it came to light that on 03.02.2018 at about 08.30 p.m., the deceased namely, Navamani @ Rajadurai, S/o.Shanmugavel, demanded



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money from his mother Latha [P.W.4] for consuming liquor. Since she had no money, the deceased got angry and took a sickle, which is lying on the floor and cut on the head of his mother [P.W.4]. Immediately, the father of the deceased as well as first petitioner [A1] / husband of P.W.4, namely, Shanmugavel [P.W.6] took her to Thanjavur Medical College Hospital, for treatment.

4.2. On 05.02.2018 at 07.30 p.m., the first petitioner [A1], who is the brother of the deceased, visited the Hospital to see his mother and enquired about the injuries and treatment. Thereafter, he enquired with his brother/deceased about the assault made by him on his mother and spoke calmly with him, then, he took him to Uppukaichipettai, North Bank of Kudamuruti River, near Odathurai with the help of his friends, namely, the petitioners 2 and 3 [A2 and A3], and by using sickles, they attacked him indiscriminately all over the body and thereafter, the first petitioner/A1 cut the throat of the deceased by using sickle. Hence, the said Rajadurai died on the spot. Thereafter, they threw the dead body into the river without anybody's notice. The Investigating Officer, on getting some information, enquired A1 and A2, who were present in the Hospital. Both of them admitted their guilt and they were arrested. They gave confession in the presence of Mr.Victor, Village Administrative Officer [P.W.12] and the admissible portion of the confession statement given by A1 and A2 were marked as Exs.P.24 and P.25. Based on the said confession, certain



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Material Objects were recovered.

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4.3. A week thereafter, the third petitioner/ A3 surrendered before the Judicial Magistrate Court and he was remanded and taken into custody. Based on his confession, one more sickle was recovered and the body was sent for postmortem. Dr.Muthumakesh, Postmortem Doctor [P.W.14] confirms that the death was due to the injuries sustained by the deceased. Thereafter, the Investigating Officer examined further witnesses, collected documents and on completion of investigation, filed charge sheet against the petitioners/ A1 to A3.

4.4. During trial, on the side of the prosecution, P.W.1 to P.W.19 were examined, Ex.P.1 to Ex.P.28 were marked besides the materials objects [M.O.1 to M.O.10]. On the side of the accused, no witness was examined and no document was marked. On conclusion of trial, the Trial Court convicted and sentenced the petitioners/ A1 to A3 as stated above.

5. The contention of the learned counsel for the petitioners is that, it is a case of circumstantial evidence. In this case, though 19 witnesses have been examined, except the official witnesses, all other witnesses turned hostile. P.W.4 Latha, P.W.5 Meenakshi Sundaram and P.W.6 Shanmugavel, the mother, brother and father of the deceased respectively, did not support the case of prosecution. P.W.2 Siva and P.W.3 Anbazhagan, who were cited by the prosecution as eye witnesses to the occurrence,



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turned hostile and did not support the prosecution case. Further, P.W.7 Ganesan; P.W.8 Dhivakar, who deposed that on knowing the death of Rajadurai, he went to Thiruvaiyaru Government Hospital; and P.W.9 Manikandan, who deposed that he did not know the accused and did not know about the Hero Honda Vehicle, bearing Registration No.TN-49-AH-1057 [M.O.9], were treated as hostile witnesses and they did not support the prosecution case and their evidences did not link the accused with guilt. P.W.10 Gopinath and P.W.11 Sivaprakasam, who are witnesses to the Observation Mahazar and Rough Sketch, were treated as hostile witnesses and did not support the prosecution case. Further, P.W.12 Victor, Village Administrative Officer and P.W.13 Vijayakumar, Village Assistant, who are witnesses to the arrest and confession of the accused, admitted that they have signed the confession and Recovery Mahazars in the Police Station and hence, the arrest and recovery not proved.

5.1. The learned counsel further submitted that P.W.15 Ramachandran, Forensic Scientific Officer, deposed before the Trial Court that M.O.1 to M.O.4 and M.O.6 to M.O.8 contained human blood "A" Group, other than that, there is nothing significant. Though the Trial Court finding that the motive has not been proved in this case, convicted the petitioners/A1 to A3 on the ground that the recovery of material objects from the petitioners/A1 to A3 have been proved by P.W.13



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Vijayakumar, Village Assistant and the Material Objects contained human blood, which is confirmed by P.W.15 Ramachandran, Forensic Scientific Officer. From the evidence available, it cannot be even remotely considered that each circumstances have been shown to prove the hypothesis that it is the petitioners/A1 to A3 alone have committed the offence. Mere suspicion based on surmises and conjunctures will not take the place of proof. In this case, there is no iota of evidence against the petitioners/A1 to A3 and hence, he prayed for suspension of sentence.

6. Per contra, the learned Additional Public Prosecutor submitted that in this case, on the complaint of P.W.1 Archana, Village Administrative Officer of Thiruchotruthurai Village, a case in Crime No.45 of 2018 for the offence under Section 302 I.P.C. has been registered by P.W.17 Aarthi, Sub-Inspector of Police, and copies of F.I.R. were sent to the higher officials and the Court immediately. Thereafter, P.W.18 Sridhar, Inspector of Police, who visited the scene of occurrence, in the presence of P.W.10 Gopinath and P.W.11 Sivaprakasam, prepared Observation Mahazar and Rough Sketch and enquired the witnesses in the scene of occurrence. P.W.4 and P.W.5, the mother and brother of the deceased as well as the first petitioner [A1] turned hostile. Though it is quite natural that these witnesses will try to save the first petitioner/A1, P.W.13 - Vijayakumar, Village Assistant confirms the arrest, confession and recovery of M.O.1 to M.O.3. Further, from the evidence of P.W.15



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Ramachandran, Scientific Officer, it could be seen that the bloodstains found in M.O.1 to M.O.4 and M.O.6 to M.O.8 are human "A" blood group. The Trial Court on the analysis of evidence and materials produced, rightly convicted the petitioners/A1 to A3. P.W.4 the mother of the deceased though sustained cut injury at the hands of the deceased, gave different version as though she sustained the said injury at the work spot. The sequence of events from 03.02.2018 to 05.02.2018 would prove that it is the petitioners/A1 to A3, who done away the deceased and the Trial Court based on the evidence, rightly convicted the petitioners/A1 to A3. He further submitted that the judgment is of reasoned one and hence, he strongly opposed the grant of bail.

7. We have heard the submissions made by both sides and perused the materials available on record.

8. Considering the aforesaid submissions and on perusal of materials, it is seen that, apart from the official witnesses, no other independent witnesses supported the case of prosecution. It is case of circumstantial evidence. Even the official witnesses, namely, P.W.12 Victor, Village Administrative Officer and P.W.13 Vijayakumar, Village Assistant, who are the witnesses to the arrest, confession and recovery, admit that they have signed the documents in the Police Station. Further, it was the Police, who brought M.O.9 and M.O.10 Motorcycles to the Police Station. It is also seen that the arrest of the petitioners 1 and 2/A1 and A2 has been made in the Hospital by



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P.W.18 Inspector of Police. It is quite natural that the family members of the deceased persons are in the hospital, where the body of the deceased was kept. P.W.5 Meenakshisundaram, the another brother of the deceased, who was in the Village during the relevant point of time, not supported the case of the prosecution. The other witnesses only spoke about the investigation of the case.

9. From the analysis of evidence, it is seen that there is no concrete material to connect the petitioners/ A1 to A3 with the crime. On the other hand, there are serious doubts over the arrest, confession and recovery of material objects and the presence of bloodstains alone would not be sufficient. The petitioners made out a prima facie case for grant of bail. Moreover, the appeal is not likely to be taken up in the near future and that there are arguable points in favour of the petitioners herein, the petitioners are entitled for the relief of suspension of sentence.

10. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioners on the following conditions:-

- (i) The petitioners shall execute a bond for a sum of Rs.10,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the II Additional District and Sessions Judge, Thanjavur.



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(ii) The petitioners shall appear before the Trial Court on the first working day of every English Calendar 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 their absence, as directed by the Trial Court.

sd/-
21/08/2023

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23/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SMN2

TO

1 THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3 THE INSPECTOR OF POLICE
THIRUVAIYARU POLICE STATION,
THANJAVUR DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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ORDER
IN
CRL MP(MD) No.5399 of 2023
IN
CRL A(MD) No.267 of 2023
Date :21/08/2023

SA/VR/SAR. /23.08.2023/11P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.