



CRL MP(MD) No.9565 of 2023

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

Wednesday, the Thirtieth 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.9565 of 2023
in
CRL A(MD) No.429 of 2023

NAGARAJ

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT
(CRIME NO.616/2014)

... RESPONDENT/RESPONDENT

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 by the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in SC No.155/2015 on 23.03.2023 and release the petitioner on bail pending disposal of the criminal appeal.

Prayer in CRL A(MD).429/2023 :

To call for records and set aside the conviction and sentence imposed by the Fast Track Mahila Court, Virudhunagar District at Srivilliputtur in S.C.No.155/2015 on 23.03.2023 and allow this Criminal Appeal.

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.IOTHI BASU M, Advocate for the petitioner and of MR.RMS.SETHURAMAN,

<https://www.mhc.tn.gov.in/judis>



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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 petitioner, by judgment dated 23.03.2023, passed in S.C.No.155 of 2015, on the file of the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, and to release the petitioner on bail pending disposal of the above appeal.

2. The petitioner is A3 in S.C.No.155 of 2015 before the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, and vide judgment dated 23.03.2023, he was convicted and sentenced as under:-

Conviction under Section	Sentence
Section 302 r/w 34 I.P.C.	To undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for six months.
Section 506(ii) I.P.C.	To undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months.



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Both the sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentences, the petitioner filed CrI.A.(MD)No.429 of 2023. Pending the appeal, the petitioner has also filed the instant Criminal Miscellaneous Petition seeking suspension of sentence and bail.

3. The case of the prosecution is that A1 to A4 are friends. The deceased Ramani is a money lender. A1 had borrowed a sum of Rs.80,000/-, A2 had borrowed a sum of Rs.1,10,000/- and A3 had borrowed a sum of Rs.50,000/- from the deceased. Since there was some default in repayment of the amount, the deceased along with his brother viz., P.W.1, had gone to the house of A1 and taken away the belongings of A1. Like wise, they had gone to the shop of A2 and taken away the machineries from his shop. Enraged by the same, the accused 1 to 3 with the help of their friend A4, had decided to do away the deceased. Hence, on 07.10.2014 at about 1.00 p.m., the first accused called the deceased Ramani near the shop of the second accused. Hoping to receive the loan amount, the deceased also came along with P.W.1 and P.W.2 and they were waiting near the shop of the second accused. At that time, the petitioner and the 4th accused restrained the deceased and the accused 1 and 2 stabbed her continuously with the knives on the face, chest and all over the body. The deceased died on the spot and P.W.1 and P.W.2 took the deceased to the hospital, where the death was confirmed. After the death of the deceased, P.W.1 lodged a



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complaint [Ex.P1] to P.W.23, who registered the FIR and thereafter, P.W.24, took up the investigation in this case and filed the charge sheet.

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4. Before the Trial Court, on the side of the prosecution, P.W.1 to P.W.24 were examined, Ex.P.1 to Ex.P.19 and materials objects [M.O.1 to M.O.12] were marked. On the side of the accused, no witness was examined, nor any document was marked. A1 and A4 died during the trial and hence, the charges against them were abated. On conclusion of the trial, the Trial Court convicted and sentenced the petitioner/A3 as stated above.

5. The primary contention of the learned counsel for the petitioner is that the petitioner had been convicted for the offence under Sections 302 r/w 34 and 506 (ii) IPC. He further submitted that the petitioner had not used any weapons in the attack and he had only restrained the deceased from moving anywhere. With regard to Section 34 IPC is concerned, the trial Court relied upon the evidence of P.W.5 and P.W.19. P.W.5 has not supported the case of the prosecution and he turned hostile. P.W.19 is the brother of the deceased, who states that he had seen all the accused together and this would not be enough to convict the petitioner under Section 302 r/w 34 IPC. Further, there is no evidence to show that the petitioner had threatened the deceased or the witnesses.

6. The learned counsel for the petitioner further submitted that in this case



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P.W.1, P.W.2 and P.W.4 were projected as eyewitnesses. P.W.1 is the brother of the deceased, P.W.2 is the son-in-law of the deceased and P.W.4 is the friend of the deceased. P.W.4 has not supported the case of the prosecution. The presence of P.W.2 and P.W.4 is highly doubtful, since P.W.4, in his evidence had stated that after getting information, he along with P.W.2 rushed to the scene of occurrence. Hence, the presence of P.W.2 and P.W.4 in the scene of occurrence is highly doubtful. Further, P.W.1 in his evidence had stated that on the date of occurrence, he along with the deceased, P.W.2 and P.W.4 had gone to the workshop of A2 and at that time, the occurrence is said to have been taken place. The evidence of all the eye witnesses are highly contradictory and doubtful and hence, he prayed for suspension of sentence.

7. Per contra, the learned Additional Public Prosecutor submitted that in this case four accused persons were involved. The accused A1 to A3 had borrowed money from the deceased. Since, there was some default in repayment of the amount, the deceased had used some force in collecting the money. Enraged by the same, A1 to A3 along with their friend A4 had planned to murder the deceased. Hence, on 07.10.2014 at about 1.00 p.m., the first accused called the deceased Ramani near the shop of the second accused. Hoping to receive the loan amount, the deceased also came and at that time, the petitioner and the 4th accused restrained the



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deceased and the accused 1 and 2 stabbed her continuously with the knives. The deceased died on the spot and P.W.1 and P.W.2 took the deceased to the hospital, where the death was confirmed. After the death of the deceased, P.W.1 lodged a complaint [Ex.P1] to P.W.23, who registered the FIR and thereafter, P.W.24, took up the investigation in this case and prepared the observation mahazar, rough sketch and collected the articles found in the scene of occurrence in the presence of eyewitnesses. Thereafter, recorded the statement of the eyewitnesses, conducted inquest and sent the body for postmortem. On the basis of the confession given by the accused, the knives and other articles have been seized. On completion of investigation, charge sheet has been filed before the trial Court. The Trial Court, on analysing the evidence in proper perspective, rightly convicted the petitioner/accused and hence, he strongly opposed the grant of bail.

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

9. On a perusal of the records, it is seen that the petitioner had been convicted only on the basis of the evidence given by P.W.5 and P.W.19. The evidence of P.W.5 and P.W.19 is to the effect that on 07.10.2014, at about 12.00 a.m., they have seen all the accused together and further, they have not stated anything about the occurrence.

Further, the petitioner had not used any weapons in the attack and he had only



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restrained the deceased from moving anywhere. Hence, this Court is inclined to grant the relief of suspension of sentence.

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

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputtur; and
- (ii) The petitioner 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 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.

sd/-
30/08/2023

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04/09/2023

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



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TO

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1 THE JUDGE, FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE INSPECTOR OF POLICE, RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.

3 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-12986[I] dated 31/08/2023)

ORDER IN
CRL MP(MD) No.9565 of 2023
in
CRL A(MD) No.429 of 2023
Date :30/08/2023

RS//SAR-(04.09.2023) 8P 6C

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