



CRL MP(MD) No.12276 of 2023

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

Friday, the Twenty Fifth 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.12276 of 2023  
in  
CRL A(MD) No.762 of 2023

GANAPATHI THEVAR

... Petitioner / Appellant / Accused No.3

Vs

STATE REPRESENTED BY  
THE INSPECTOR OF POLICE  
MANOOR POLICE STATION,  
TIRUNELVELI DISTRICT.  
(CRIME NO. 34 OF 2021)

... 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 execution of sentence by granting bail in S.C No. 557/2021 dated 28.07.2023 and 31.07.2023 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Tirunelveli, Tirunelveli District. pending disposal of the above Crl Appeal.



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Prayer in CRL A(MD) No.762 of 2023:

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To admit this appeal on file and to call for the records from the Lower Court and duly set aside the same in S.C.No.557 of 2021 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Tirunelveli, Tirunelveli District, dated 28.07.2023 and 31.07.2023 by acquitting the appellant.

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.PRABHU.K, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, while admitting the criminal appeal, 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 28.07.2023 and 31.07.2023, passed in S.C.No.557 of 2021, on the file of the learned Sessions Judge, Mahalir Neethimandram, Tirunelveli, Tirunelveli District, and to enlarge the petitioner/A3 on bail pending disposal of the above appeal.

2.The petitioner is Accused No.3 in S.C.No.557 of 2021 before the learned Sessions Judge, Mahalir Neethimandram, Tirunelveli, Tirunelveli District, and vide judgment dated 28.07.2023 and 31.07.2023, he was convicted and sentenced as under:-



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| Conviction under Section | Sentence                                    | Fine amount                                                                           |
|--------------------------|---------------------------------------------|---------------------------------------------------------------------------------------|
| u/s.294(b) I.P.C.        | To undergo one month rigorous imprisonment  | To pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment        |
| u/s.341 I.P.C.           | To undergo one month rigorous imprisonment  | To pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment        |
| u/s.4 of the TNPWH Act   | To undergo six months rigorous imprisonment | To pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment |

All the sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentences, the petitioner filed Crl.A.(MD)No.762 of 2023 along with the instant Criminal Miscellaneous Petition, seeking suspension of sentence and bail.

3.The brief facts of the case are that, on 13.01.2021 at about 07.00 a.m. P.W.19 – Selvakumar, Sub-Inspector of Police, received a complaint from P.W.1 – Subramanian that on the same day, at about 05.30 a.m., when his wife Parvathi along with his daughter P.W.2 – Lavakumari went to the house of P.W.4 –



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Karupayee for collecting cow dung, A1 to A3 abused the wife of P.W.1 and claimed that as long as she is alive, the pathway dispute cannot be resolved between them.

A1 asked A2 and A3 to caught hold of Parvathi and thereafter, A1 using iron rod, hit on the head of Parvathi and assaulted her several times. On hearing the hue and cry, P.W.1 came out from the house, saw the assault and P.W.1, P.W.2, P.W.3 and P.W.5 raised alarm and the accused ran away on seeing them. Since the said Parvathi was in unconscious stage, P.W.1 immediately called 108 Ambulance and the Ambulance reached the scene of occurrence at about 06.30 a.m., and on examination, it was found that his wife Parvathi died. Thereafter, P.W.1 lodged complaint [Ex.P.1]. On receipt of the complaint, P.W.20 Investigating Officer visited the scene of occurrence, prepared Observation Mahazar (Ex.P.3) and Rough Sketch (Ex.P.23) in the presence of P.W.7, thereafter, conducted inquest and sent the body for postmortem.

3.1. P.W.12 Postmortem Doctor confirmed that the death was due to the injury sustained by the deceased. P.W.11 Special Sub-Inspector of Police, who brought the sniffer dog to the scene of occurrence, with the aid of sniffer dog, iron rod [M.O.1] was seized under the cover of Mahazar. In the meanwhile, A1 surrendered before the Judicial Magistrate Court, Madurai, A3 surrendered before the Judicial Magistrate Court, Ambasamudram, and A2 surrendered before the Judicial



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Magistrate Court, Tenkasi. All the three were taken to police custody on 23.01.2021 and A1 gave confession statement. Based on his confession, his blood stained shirt and lungi [M.O.5 and M.O.6] recovered under the cover of Mahazar in the presence of P.W.8 and P.W.9. Thereafter, A4 in this case surrendered on 29.03.2021. During investigation, it was found that prior to the date of occurrence, on 12.01.2021, all the accused assembled in the house of A1 and conspired to do away somebody in the family of P.W.1, so that the pathway dispute between A1 and P.W.1's family can be resolved once and for all. Thereafter, Sections were altered by Ex.P.29 Alteration Report.

3.2. During trial, on the side of the prosecution, P.W.1 to P.W.20 examined, Ex.P.1 to Ex.P.29 and materials objects M.O.1 to M.O.8 marked. 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 petitioner/ A3 as stated above.

4. The contention of the learned counsel for the petitioner is that the petitioner has been convicted for the offences under Sections 294(b), and 341 I.P.C. and Section 4 of TNPWH Act and the maximum sentence imposed on him is six months for the offence under Section 4 of TNPWH Act. The Trial Court already suspended the sentence imposed on the petitioner in Cr.M.P.No.10295 of 2023 for one month, upto 31.08.2023. He further submitted that the only allegation against the petitioner/ A3



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is that he along with A2 caught hold of the deceased. The eyewitnesses in this case are highly doubtful. P.W.1 admits that he had come to the scene of occurrence after hearing the noise. P.W.2 is the daughter of the deceased, who was elsewhere, gives contradictory version. The evidence of other witnesses, who are neighbours, are also contradictory to each other. The employment of sniffer dog in this case itself to prove that there was no eyewitness and for that reason only, the service of sniffer dog was sought, which led to the path to some extent and from there, the iron rod recovered. Since there was prior dispute between A1 and the family of the deceased with regard to pathway, the petitioner, who is known to A1, has been falsely implicated in this case. The petitioner is 74 years old and he is in the evening of his life and one step closer to the grave and hence, he prayed for suspension of sentence.

5. Per contra, the learned Additional Public Prosecutor submitted that in this case, P.W.1 and P.W.2 eyewitnesses clearly stated that A2 and the petitioner/A3 restrained the deceased from moving anywhere, enabling A1 to assault the deceased with iron rod [M.O.1] several times on her head, which caused skull injury. P.W.12 Postmortem Doctor confirms the same. Further, in the iron rod, a human hair was found, which was subjected to forensic examination, which confirmed the hair belongs to the deceased. The said iron rod has been used by A1 for causing death of



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the deceased. He further submitted that the Trial Court on analysing the evidence both oral and documentary in detail, concluded that there is no conspiracy, acquitted A4 in this case and as regards this petitioner/A3 and A2 have been convicted under Sections 341 and 294(b) I.P.C. and Section 4 of TNPWH Act. The learned Additional Public Prosecutor confirmed that the Trial Court already suspended the sentence of the petitioner/ A3 till 31.08.2023.

6. We have heard Mr.K.Prabhu, learned counsel for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent/State.

7. Considering the aforesaid facts and circumstances of the case and also considering the submissions made by the learned counsel on either side, this Court is inclined to grant the relief of suspension of sentence.

8. 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 Sessions Judge, Mahalir Neethimandram, Tirunelveli, Tirunelveli District.



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(ii) The petitioner shall appear before the Trial Court once in three months i.e., on the first working day of 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/  
25/08/2023

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

SMN2

To

1.The Sessions Judge,  
Mahalir Neethimandram,  
Tirunelveli, Tirunelveli District.

2.The Inspector of Police,  
Manoor Police Station,  
Tirunelveli District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

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



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The Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate ( SR-12838[I] dated 25/08/2023 )

ORDER  
IN  
CRL MP(MD) No.12276 of 2023  
in  
CRL A(MD) No.762 of 2023  
Date :25/08/2023

ED/VRS/SAR- (28/08/2023) 9P / 6C

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