



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

Friday, the Twenty Eighth day of April Two Thousand and Twenty
Three

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PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
and
The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

*Crl.M.P(MD)No.12065 of 2022 in Crl.A(MD)No.627 of 2022 and
Crl.M.P(MD)No.13443 of 2022 in Crl.A(MD)No.713 of 2022 and
Crl.M.P(MD)No.13215 of 2022 in Crl.A(MD)No.705 of 2022*

1 BASKAR

2 MATHAN @ MATHANKUMAR

3 MARI @ MARIYAPPAN

... APPELLANTS/ACCUSED NOS. 10 TO 12
IN CRL MP(MD)No. 12065 of 2022

S.ILAYARAJA

...PETITIONER/APPELLANT/ACCUSED NO.1
IN CRL MP(MD)No. 13443 of 2022

T.MUTHU

...PETITIONER/APPELLANT/ACCUSED NO.2
IN CRL MP(MD)No. 13215 of 2022

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
AATHANAKOTTAI POLICE STATION,
PUDUKKOTTAI DISTRICT.
CRIME NO. 76/2012

... RESPONDENT/RESPONDENT/COMPLAINANT
IN ALL PETITIONS

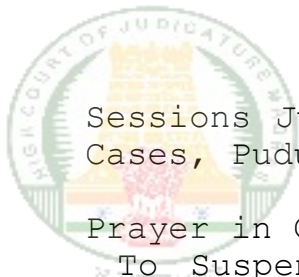
PRAYER IN CRL MP(MD)No. 12065 of 2022:

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 of Imprisonment imposed by the learned Additional District and Sessions Judge / Presiding Officer Special Court for EC and NDPS Act Cases, Pudukkottai in S.C No. 29 of 2015 by the Judgment dated 19.09.2022 and enlarge the Petitioners/Appellants on bail, pending disposal of the above said Criminal Appeal.

PRAYER IN CRL A(MD)No. 627 of 2022 IN CRL MP(MD)No. 12065 of 2022:

Pleased to call for records and to set aside the conviction and sentence dated 19.09.2022, by the learned Additional Disrict and

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Sessions Judge/ Presiding officer special court for EC and NDPS Act Cases, Pudukkottai in S.C.No. 29 of 2015 and acquit the Appellants.

Prayer in CRL MP(MD). 13443/ 2022 IN CRL A(MD)No. 713 of 2022 :

To Suspend the sentence imposed by the Additional District and Sessions Judge(Special Court for EC and NDPS Act Cases), Pudukkottai by its judgment dt.19.9.2022 in SC.No.29 of 2015 and enlarge the Petitioner on bail pending disposal of Criminal Appeal.

PRAYER IN CRL A(MD)No. 713 of 2022:

Pleased to call for records and to set aside the judgment dated 19.09.2022, passed by the Additional District and Sessions Judge (Special court for EC and NDPS Act Cases), Pudukkottai in S.C.No. 29 of 2015 by allowing this Criminal Appeal.

Prayer in CRL MP(MD). 13215/ 2022 IN CRL A(MD)No. 705 of 2022:

To suspend the sentence imposed by the Additional District and Sessions Judge(Special Court for EC and NDPS Act Cases), Pudukkottai by its judgement dt.19/9/2022 in SC no.29/2015 and enlarge the petitioner on bail pending disposal of Criminal Appeal.

PRAYER IN CRL A(MD)No. 705 of 2022:

Pleased to call for records and to set aside the judgment dated 19.09.2022, passed by the Additional District and Sessions Judge (Special court for EC and NDPS Act Cases), Pudukkottai in S.C.No. 29 of 2015 by allowing this Criminal Appeal.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.KARUNANITHI.M, Advocate for the petitioners in CRL A(MD)NO.627 of 2022 and of MR.GOPALA KRISHNA LAKSHMANA RAJA, Senior Counsel for MR.K.G.ARUNKUMAR, Advocate for the Petitioners in CRL A (MD)Nos. 713 & 705 of 2022 and of MR.E.ANTONY SAHAYA PRABAHAR, Additional Public Prosecutor on behalf of the Respondent in all the Appeals the court made the following order:-

Reserved on : 25.04.2023

Pronounced on : 28.04.2023

[Order of the Court was made by K.K.RAMAKRISHNAN, J.]

The petitioners in Crl.M.P(MD)No.12065 of 2022 are arrayed as A10, A11 and A12; the petitioner in Crl.M.P(MD)No.13443 of 2022 is arrayed as A1 and the petitioner in Crl.M.P(MD)No.13215 of 2022 is arrayed as A2 in S.C.No.29 of 2015 on the file of the learned Sessions Judge(Special Court for E.C and NDPS Act Cases), Pudukkottai. By judgement dated 19.09.2022 in S.C.No.29 of 2015, the learned Sessions Judge(Special Court for E.C and NDPS Act Cases), Pudukkottai, has convicted the accused for the offence under Sections 120(b) & 302 IPC and sentenced the accused as follows:



Sl.No.	Accused Rank	Offence Punishable under Sections	Sentence of Imprisonment
1	A1	120 (b) IPC	Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.
		302 IPC	Life Imprisonment, and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.
2	A2	120 (b) IPC	Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.
		120 (b) IPC	Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.
3	A10	302 IPC	Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.
4	A11	302 IPC	Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.
5	A12	302 IPC	Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months.

Challenging the above said conviction and sentence, the accused persons filed the above Criminal Appeals. Pending Appeals, these accused persons filed these criminal miscellaneous petitions to suspend the sentence of imprisonment.

2. According to the prosecution, A1 & A2, due to the previous motive between themselves and the deceased, engaged the hirelings, namely, A10, A11, A12 to murder the deceased and they have done to death of the deceased. The trial Court, after analysing the evidence, more particularly, the evidence of P.W.1, P.W.9, P.W.15, P.W.20, P.W.22 & P.W.23 and some portion of the hostile witnesses' evidence, which also supporting the prosecution case, found guilty for the charges framed against these petitioners under Sections 120 (b) and 302 IPC and convicted and sentenced them by judgment dated 19.09.2022.

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3. Challenging the same, they filed these appeals and in the appeals, they preferred above suspension of sentence of imprisonment petitions and make the following submissions:

There was no connecting material to prove the conspiracy between A1 & A2 and the hirelings namely, A10, A11 & A12 and also there was no reason to believe the evidence of the last seen together and the last seen witnesses are relative of the deceased and they are examined after 20 days and hence, the reliance placed by the learned trial Judge is erroneous and hence, they are entitled to get suspension of sentence of imprisonment.

4. Per contra, learned Additional Public Prosecutor stated that there is strong motive and the same was established through the evidence and the specific evidence of the witnesses is that A1 and A2 are seen in the place of the occurrence just before the occurrence as well as after the commission of offence and considering the other aspect of recovery on the basis of the investigation officer's evidence, the learned trial Judge correctly found that the accused are guilty. Apart from that, the accused A1 and A2 engaged the hirelings, namely, A10 to A12, who have had number of bad antecedents and that fact itself enough for dismissal of these suspension of sentence petitions at this stage.

5. The Hon'ble Supreme Court in number of cases specifically cautioned to decline the grant of bail to the petitioners like the accused who have had number of previous cases and the present case also come under the said exception. The learned Additional Public Prosecutor furnished the following antecedents of the accused persons:

Sl.No	Rank and name of the Accused	Total number of Previous Cases	Cases registered under Section	Crime No.
1	A1-Ilayaraja	1 and final order under Section 110 Cr.P.C., also passed.	147, 148, 323, 427, 448, 506(ii) IPC	Adanak Kottai PS Crime No.53/2007
2	A10-Baskar	27	147, 148, 341, 120 (b), 34, 149, 302 of IPC	Uraiyur PS Crime No. 193 of 2014



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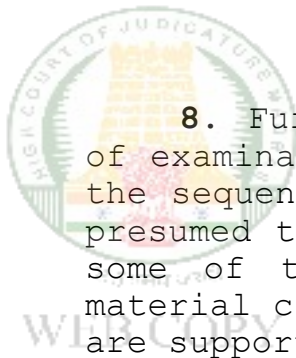


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			120(b), 147, 148, 149, 302, 397, 324, 342, 427 of IPC and Section 3(1) (r) of SC/ST Act	Nadukottai P.S Crime No. 248/2019
			302 of IPC	Vellipalayam P.S Crime No. 513/2005
			302 of IPC	Viralimalai PS Crime No. 513/2005
			109, 114, 120b, 212, 294(b) 302, 324, 449 & 506 (ii) of IPC.	Pudukottai Town PS Crime No. 135/2014
3	A11- Madhan @ Madhankumar	6	397 and 302 of IPC	Thiruppur PS Crime No. 199/16
			302 of IPC	TNPS Crime No.271/15
4	A12- Mariamman @ Mariappan	5	147, 148, 302, 120(b) of IPC	Trichy Pettavathala i PS Crime No. 17 of 2012
			147, 148, 341 & 302 of IPC.	Sivagangai, Devakottai Taluk PS Crime No. 16 of 2013

6. The accused persons, viz., A10, A11 and A12 are the hirelings and they have the number of previous antecedents as stated above and hence, their involvement in the present murder case at the instigation of the A1 and A2 was accepted by the learned trial Judge on the basis of the evidence of P.W.1, P.W.9, P.W.15, P.W.20, P.W.22 & P.W.23.

7. Considering the above bad antecedents and also categorically finding that due to motive between the deceased and A1&A2, A1&A2 conspired together with hirelings A10, A11 and A12 and done to death of the deceased and the same was revealed from the circumstances in which A1 and A2 followed the deceased and returned to the said place of occurrence after the commission of offence and the same was clearly deposed by the witnesses and the same was also accepted by the learned trial Judge.



8. Further, the date of occurrence is 03.11.2012 and the date of examination of the witnesses commenced from 11.03.2020 and from the sequence of events available from the record, this Court easily presumed that all material witnesses are won over. Dehors the same, some of the portion of hostile witnesses corroborated with all material circumstances deposed by the number of other witnesses, who are supported the prosecution case.

9.1. At this juncture, while dealing the suspension of sentence cases, it is relevant to follow the principle laid down by the Hon'ble Supreme Court in the following cases:

Preet Pal Singh v. State of U.P., reported in 2020(8) SCC 645:

"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC".

9.2. **Bakshish Ram v. State of Punjab, reported in (2009) 6 SCC 561:**

"10. cases where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The seriousness and gravity of the offence must be looked into before granting the bail."

9.3. *State of Punjab v. Deepak Mattu*, reported in (2007) 11 SCC 319:

6. An order of suspension of conviction admittedly is not to be readily granted. The High Court in its order dated 11-1-2005 passed a judgment irrespective of conviction and sentence, only on two grounds:



(i) A long time may be taken to decide the appeal.

(ii) There are good points to argue.

7. While passing the said order, the High Court did not assign any special reasons. Possible delay in disposal of the appeal and that there are arguable points by itself may not be sufficient to grant suspension of a sentence. The High Court while passing the said order merely noticed some points which could be raised in the appeal. The grounds so taken do not suggest that the respondent was proceeded against by the State, mala fide or in any bad faith."

9.4. Angana v. State of Rajasthan, reported in (2009) 3 SCC 767:

14. When an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict under Section 389 of the Criminal Procedure Code.

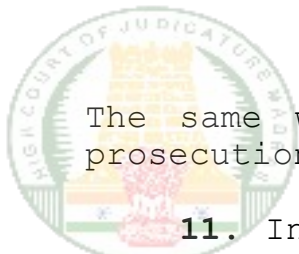
9.5. Sidhartha Vashisht v. State (NCT of Delhi), reported in (2008) 5 SCC 230:

"29. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate court, he cannot be said to be an "innocent person" until the final decision is recorded by the superior court in his favour.

32. The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What is really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail.

33. Hence, within "measurable distance of time" the appeal is likely to be heard. Keeping in view the seriousness of offence, the manner in which the crime was said to have been committed and the gravity of offence, we are of the view that no case has been made out by the applicant appellant for suspension of sentence and grant of bail."

10. In this case A10, A11 and A12 are hirelings, who have
<https://www.mca.gov.in> number of murder cases and they are engaged by A1 & A2.



The same was appreciated by the learned trial Judge through the prosecution evidence.

11. In the said circumstances, considering the above principle, upon taking note of the previous antecedent of the accused as well as the manner of the incident, this Court is not inclined to entertain these suspension of sentence of imprisonment petitions. Eventhough A2 has no previous case, considering his active role of participation in the occurrence and his execution of the conspiracy through the hirelings, this Court, without any reservation, declined to entertain his plea of suspension also. In such circumstances, these criminal miscellaneous petitions are liable to be dismissed and accordingly, these Criminal Miscellaneous Petitions are dismissed.

sd/-

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

PJL
TO

- 1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE/ PRESIDING OFFICER,
SPECIAL COURT FOR EC AND NDPS ACT CASES,
PUDUKOTTAI.
- 2 THE INSPECTOR OF POLICE
AATHANAKOTTAI POLICE STATION,
PUDUKKOTTAI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY DISTRICT.
- 4 THE SUPERINTENDENT
CENTRAL PRISON, CUDDALORE DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN

*Cr1.M.P(MD)No.12065 of 2022 in
Cr1.A(MD)No.627 of 2022 and
Cr1.M.P(MD)No.13443 of 2022 in
Cr1.A(MD)No.713 of 2022 and
Cr1.M.P(MD)No.13215 of 2022 in
Cr1.A(MD)No.705 of 2022*

Date :28/04/2023

PKP/SSS/SAR-3/05.05.2023/ **8P/6C**

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