



CrI.MP.Nos.2979 & 2980 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.MP.Nos.2979 & 2980 of 2024

in

CrI.A.No.428 of 2021

1.Lakshmi @ Sumathi	... Petitioner/1st Appellant/A1 in CrI.M.P.No.2979 of 2024
2.Chinnathambi	... Petitioner/2nd Appellant/A2 in CrI.M.P.No.2980 of 2024

Versus

State Rep. by
The Inspector of Police,
Thevoor Police Station,
Salem District.
(Crime No.107 of 2015)

... Respondent/Respondent

Prayer in both CrI.M.Ps:- Criminal Miscellaneous Petitions filed under Section 389 [1] of the CrI.P.C., 1973, to suspend the sentence of imprisonment imposed in the judgment dated 11.08.2021 made in S.C.No.26 of 2017 on the file of the learned III Additional District and Sessions Judge, Salem and enlarge the petitioners on bail pending disposal



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of the above Criminal Appeal.

In both Crl.M.Ps:

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

[Order of the Court was made by SUNDER MOHAN, J.]

These criminal miscellaneous petitions have been filed seeking to suspend the sentence of imprisonment imposed in the judgment dated 11.08.2021 made in S.C.No.26 of 2017 on the file of the learned III Additional District and Sessions Judge, Salem and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

2. The petitioners in the above Sessions Case, were convicted and sentenced as follows:

Offence under Sections	Sentence imposed
120(B) r/w 302 IPC	for the said offence, A1 and A2 to undergo life imprisonment along with fine of Rs.5000/- each in default, to undergo rigorous imprisonment for six months.



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341 IPC	for the said offence, A2 to undergo one month rigorous imprisonment.
404 IPC	for the said offence, A2 to undergo two years rigorous imprisonment with fine of Rs.2,000/- in default, two month rigorous imprisonment
201 r/w 302 IPC	A2 to undergo five years rigorous imprisonment along with fine of Rs.3,000/- in default, three month rigorous imprisonment under Section 235(2) of Cr.P.C.
All the sentences shall run concurrently	

3. Challenging the above conviction and sentence, the petitioners have filed the above Criminal Appeal and seeks suspension of sentence and bail in the present petitions.

4. Heard Mr.N.Manoharan, the learned counsel for the petitioners and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.



5. The case of the prosecution is that the deceased is the husband of A1, the first petitioner; the first accused and the second accused who is the second petitioner herein, were in illegal intimacy for more than four years; since the deceased was in hindrance to their relationship, A1 and A2 decided to murder him with the help of A3; on 28.05.2015 at about 8.30 p.m., when A1 and the deceased were on the way to home in a two wheeler, A2 and A3 followed them in an another two wheeler with iron pipe. When the deceased reached at Eduthinnimedu, A2 and A3 stopped the husband of A1 and attacked with iron pipe, due to which, he succumbed to the injuries; in order to escape from the offence, they threw the body of the deceased behind the bush.

6. The learned counsel for the petitioners submitted that the prosecution case which is a case on circumstantial evidence, has not been established that the entire case based on the extra judicial confession said to have been given by A2 to the Village Administrative Officer who was examined as P.W.1, 25 days after the occurrence; in the absence of any other evidence to corroborate the said extra judicial confession which is given to a stranger, the petitioners / appellants have a fair chance of success



in the appeal. He further submitted that the first petitioner is confined at Central Prison, Coimbatore and the second petitioner is confined at Central Prison, Salem.

7. The learned Additional Public Prosecutor *per contra* submitted that besides extra judicial confession, P.W.2, the daughter of the deceased and A1, had stated about the motive of A1 and the illegal relationship between A1 and A2 and that the other circumstances which has recovery to corroborate the extra judicial confession given by A2. Therefore, the trial Court was right in convicting the petitioners and prayed for dismissal of the petitions.

8. We have carefully considered the rival submissions and perused the records.

9. The petitioners are in custody from 11.08.2021. Admittedly, the case primarily rests on the extra judicial confession given by A2 to P.W.1, 25 days after the occurrence. It is also the prosecution case that FIR was registered at the instance of P.W.1, when he heard about the presence of the



body in a land within his jurisdiction. He has participated in the investigation conducted by the respondent. Further, P.W.1 is a stranger to A2. In such circumstances, we are *prima facie* of the view that the conviction which is primarily based on the extra judicial confession, cannot be sustained. That apart, as against A1, we find that the extra judicial confession given to A2 can only be used to lend assurance to other evidence on record. However, there is no other evidence on record to complete the chain of circumstances as against A1. In these circumstances, we are of the view that the petitioners have fair chance of success in the appeal.

10. Considering the above and the fact that the petitioners are in custody from 11.08.2021 and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioners herein.

11. Accordingly, this criminal miscellaneous petitions stand allowed and the sentence of imprisonment is suspended and the sentence imposed on the petitioners is suspended on the following conditions:



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(i) The petitioners shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned III Additional District and Sessions Judge, Salem;

(ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii) The petitioners shall appear before the trial Court on the first working day of every 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.

[M.S.R.,J.] [S.M.,J.]
12.07.2024

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M.S.RAMESH, J
and
SUNDER MOHAN, J

gsk

Copy to:-

1. The learned III Additional District and Sessions Judge,
Salem.
2. The Inspector of Police,
Thevoor Police Station,
Salem District.
3. The Superintendent of Prisons,
Central Prison, Salem.
4. The Superintendent of Prisons,
Central Prison, Coimbatore.
5. The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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