



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.Nos.4156 of 2023 & 7393 of 2024
in Crl.A.Nos.303 of 2023 & 1176 of 2022

Crl.M.P.No.4156 of 2023 in Crl.A.No.303 of 2023

Sankar

...Petitioner/Appellant/A1

Versus

State rep by,
The Inspector of Police,
Avinashi Police Station,
Tirupur District.

...Respondent/Respondent



*Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022*

WEB COPY

Crl.M.P.No.7393 of 2024 in Crl.A.No.1176 of 2022

S.Deenadhayalan

...Petitioner/Appellant /A2

Versus

State rep by,
The Inspector of Police,
Avinashi Police Station,
Tirupur District.
In Crime No.675 of 2018

...Respondent/Respondent

Common Prayer:- Criminal Miscellaneous Petitions have been filed under Section 389 [1] of Cr.P.C., to suspend the sentence imposed in S.C.No.80 of 2021 by the Principal Sessions Judge, Tirupur by judgement dated 31.10.2022 and release the petitioners on bail.

For Petitioner
in Crl.M.P.No.4156 of 2023 : Mr.S.Silambuselvan

For Petitioner
in Crl.M.P.No.7393 of 2024 : Mr.S.Bharanidharan
for M/s.B.Mohan

For Respondent
in both Crl.M.Ps. : Mr.A.Gokulakrishnan
Additional Public Prosecutor



WEB COPY



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

COMMON ORDER

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

These Criminal Miscellaneous Petitions have been filed seeking to suspend the sentences imposed on the petitioners/A1 & A2 by Judgment and order dated 31.10.2022 passed in S.C.No.80 of 2021 on the file of the learned Principal Sessions Judge, Tirupur, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who are arrayed as A1 & A2 in the above Sessions Case, was convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A1 & A2	364 of the IPC	Each of them sentenced to undergo three years of rigorous imprisonment and each to pay a fine of Rs.1,000/- in default each to undergo three months of rigorous imprisonment.
	302 of the IPC	Each of them sentenced to undergo imprisonment for life and each to pay a fine of Rs.2,000/- in default each to undergo three months of rigorous imprisonment.
	392 r/w 397 IPC	Each of them sentenced to undergo



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

	three years of rigorous imprisonment and each to pay a fine of Rs.1,000/- in default each to undergo three months of rigorous imprisonment.
Sentences are directed to run concurrently.	

3. Challenging the above conviction and sentence, the petitioners have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present petitions.

4. Heard Mr.S.Silambuselvan and Mr.S.Bharanidharan, learned counsel appearing for the petitioners/A1 & A2 and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5.The case of the prosecution is that the petitioners along with a juvenile accused were staying in the house of A1; and that on 20.09.2018, they wanted to consume liquor and since they did not have money, they hatched their plan to commit robbery; that at about 12 a.m., on the very same day, when they were coming near a hotel, the deceased asked for lift and the juvenile accused took him in his bike followed by the petitioners



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

herein in another bike; that they took the deceased to a secluded place and threatened him to give all his valuables; and that when the deceased refused, they assaulted him with iron pipes on his head, ear and jaw.

6. The learned counsel for the petitioners submitted that the case is based on circumstantial evidence and has not been established conclusively. The only evidence relied upon by the prosecution is the recovery of the mobile phone belonging to the deceased, which was not identified by any of the witnesses. Hence, they prayed for suspension of sentence.

7. The learned Additional Public Prosecutor for the respondent/State, *per contra* opposing the petition for suspension of sentence, submitted that the case has been established beyond reasonable doubt and there is no infirmity in the Judgment of the Trial Court, and prayed for dismissal of the petition.

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



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

WEB COPY

9. On perusal of the record, we find that the circumstances have not been conclusively established; that P.W.3, the wife of the deceased has not identified the mobile phone recovered from the accused as that of the deceased. There are no other circumstances to connect the petitioners in the crime. Therefore, we are of the *prima facie* view that the petitioners have a fair chance of success in the appeal.

10. Considering the above and the fact that the petitioners are in custody since 31.10.2022 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/A1 & A2.

11. Accordingly, this criminal miscellaneous petitions stands **allowed** and the sentence imposed on the petitioners/A1 & A2 is suspended on the following conditions:

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

WEB COPY

the satisfaction of the learned Principal Sessions Judge, Tirupur;

- (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.]
28.06.2024

Anu
Issue order copy by 02.07.2024
Upload the order copy forthwith.
Internet: Yes

M.S.RAMESH,J.,
and



WEB COPY



Crl.MP.Nos.4156 of 2023 and 7393 of 2024
in Crl.A.Nos.303 of 2023 and 1176 of 2022

SUNDER MOHAN,J.,

Anu

Copy to:-

1.The Principal Sessions Judge,
Tiruppur.

2.The Inspector of Police,
Avinashi Police Station,
Tirupur District.

3.The Superintendent of Prisons,
Central Prison, Coimbatore.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

Crl.MP.Nos.4156 of 2023 & 7393 of 2024
in Crl.A.Nos.303 of 2023 & 1176 of 2022

28.06.2024