



WEB COPY



Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

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

*(Order of the Court was delivered by **SUNDER MOHAN, J.**)*

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners vide judgment delivered in S.C.No.160 of 2020, dated 07.06.2023, on the file of the learned Sessions Judge, Mahalir Neethimandram, Chennai and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

2. Challenging the conviction and sentence imposed on the petitioners, they have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

3. Heard Mr.S.Manoharan, the learned counsel for the petitioners and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor for the respondent police.



CrI.M.P.No.5921 of 2024
in CrI.A.No.718 of 2023

WEB COPY

4. It is the case of the prosecution that A1 is the mother of A2. A2 had love affair with A3 (acquitted accused) and she became pregnant. After the birth of child, A1 and A2 conspired to kill the baby along with A3 and put the live baby inside the stainless steel utensil box and closed the lid, due to which, the baby got suffocated and died due to asphyxia. Thereafter, they disposed the body of the deceased baby by throwing it in the garbage bin.

5. Learned counsel for the petitioners / appellants submitted that the case is based on circumstantial evidence and has not been established conclusively that the evidence adduced by the prosecution that the body of the new born baby was thrown into the garbage bin through the evidence of PW1 and also not conclusively established that the appellants had conspired and caused the death of the deceased and that the appellants were arrested one month after the offence and that A2 has 2 1/2 years old child, who is also confined in the prison because of the conviction and sentence imposed on the 2nd accused.

6. Learned Additional Public Prosecutor, per contra, submitted that



Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

there are witnesses to prove the circumstance of the appellants screening the offence by throwing the dead body of the deceased in a garbage bin that the post mortem report also shows that the infant died due to asphyxia and other circumstances conclusively established the involvement of the petitioners and therefore opposed the petition for suspension of sentence.

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

8. We find on a perusal of records that A3 has been acquitted by the trial Court. The only circumstance that has been established by the prosecution is that the body of the infant was found in the garbage by PW1, who was working as a lorry driver in the Corporation garbage clearing. The prosecution had also established that A2 who was pregnant and had delivered a baby. There are no other circumstances and the other witnesses have also turned hostile. Therefore, we are of the view that the petitioners have fair chance of success in the appeal.

9. Considering the above facts and also that a 2 1/2 year old child of the 2nd petitioner is also staying with the 2nd petitioner in the jail, and the



Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

appeal is not likely to taken up for hearing in near future, we are inclined to suspend the sentence imposed on the petitioners and grant bail to the petitioners.

10. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence imposed on the petitioners is suspended on the following conditions:-

- (i) The petitioners shall separately execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only), with two sureties each, each for a like sum to the satisfaction of the learned Session Judge, Magalir Neethimandram, Chennai.
- (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;
- (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 he is not able to



Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

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 his absence, as directed by the trial Court.

(M.S.R, J.) (S.M, J.)

01.08.2024

kas

Note: Issue Order Copy on .08.2024



WEB COPY



Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

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

kas

Crl.M.P.No.5921 of 2024
in Crl.A.No.718 of 2023

01.08.2024