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Crl.MP.No.4291/2023 in Crl.A.No.318/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.4291/2023 in Crl.A.No.318/2023

1. B.Srinivas
2. U.Nagaraj

.. Petitioners/A1 & A2

Versus

State rep.by
The Inspector of Police
Uddhanapalli Police Station,
Hosur.
(Cr.No.435 of 2016)

.. Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.147 of 2017 dated 09.03.2023 on the file of the learned Additional District and Sessions Judge, Hosur, and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

For Petitioners : Mr.R.Selvakumar
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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assisted by Mr.C.Aravind

ORDER

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

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners/A1 & A2 by judgment and order dated 09.03.2023 passed in S.C.No.147 of 2017 on the file of the learned Additional District and Sessions Judge, Hosur, 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	449 IPC	Each of them sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months.
	302 r/w 34 IPC	Each of them sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months.
Sentences were ordered to run concurrently.		

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



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4. Heard Mr.R.Selvakumar, the learned counsel appearing for the petitioners/A1 & A2 and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that there was a civil dispute between the families of the accused and the deceased with regard to a property; that on account of the same, the accused decided to do away with the deceased and in order to execute their plan on 14.12.2016 between 9.30 a.m., and 10.30 a.m., they went to the guest house belonging to the deceased, criminally trespassed into his bedroom and both the accused indiscriminately stabbed the deceased with knives with an intention to cause death, as a result of which, the deceased died due to shock and haemorrhage.

6. Mr.R.Selvakumar, learned counsel appearing for the petitioners submitted that the case based on circumstantial evidence has not been established by the prosecution. The motive that there was a property dispute has not been established and in fact the civil dispute pending between the deceased and accused ended in favour of the family of the accused and there is no reason for the petitioners/A1 & A2 to be aggrieved by the action of the



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deceased. The learned counsel further submitted that the other circumstance relating to recovery of mobile phone of the deceased from the accused cannot be believed as the arrest and recovery is doubtful and further, the circumstance of the witness seeing the accused near the place of occurrence is also doubtful and therefore, he prayed that the sentence imposed on the petitioners/accused may be suspended.

7. The learned Additional Public Prosecutor *per contra* submitted that PW5 to PW7 have all seen the accused near the place of occurrence and in fact PW8 and PW9 saw the accused coming out of the guest house. That apart, the recovery of mobile phone of the deceased from the accused is a strong circumstance, besides the motive that there was a land dispute between the accused and the deceased, to conclusively prove the involvement of the accused. Hence, he prayed for dismissal of the petition.

8. We find from the records that the civil suit filed by the father of the accused and the deceased and others ended in favour of their father as per the judgment dated 24.06.2016 in O.S.No.5 of 2005 on the file of the learned District Munsif, Hosur, marked as Ex.D1. Therefore, the case of the



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prosecution that the petitioners were aggrieved due to the civil dispute, appears to be doubtful.

9. That apart, we find that PW5 to PW7 had seen the accused in a place which is near the alleged place of occurrence. PW8 and PW9 are said to have seen the accused coming out of the guest house. However, it is seen from the cross examination of these two witnesses that they were both examined by the police only on 16.12.2016, i.e., two days after the occurrence and there is no explanation by the prosecution as to how the investigating officer came to know about the presence of PW8 and PW9 outside the guest house and about their seeing the accused coming out of the guest house.

10. Further, we find from the evidence of PW1 that the accused were in the police station on 16.12.2016 and both the accused were handcuffed. However, it is the case of the prosecution that they were arrested on 17.12.2016. Therefore, the arrest and recovery also appears to be doubtful.



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11. In the above circumstances, we are of the view that the petitioners have a fair chance of success in the appeal. However, it is made clear that the above observations are only an expression of our *prima facie* view.

12. Considering the above and the fact that the petitioners are in custody since 09.03.2023 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.

13. Accordingly, this criminal miscellaneous petition 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 sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Hosur;



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(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.

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[M.S.R.,J.] [S.M.,J.]
15.02.2024

Issue order copy by 16.02.2024

Upload the order copy forthwith.

Internet: Yes



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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To

- 1.The Additional District and Sessions Judge,
Hosur.
- 2.The Inspector of Police,
Uddhanapalli Police Station,
Hosur.
- 3.The Superintendent of Prisons,
Central Prison, Salem.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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