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Crl.M.P.No.6637 of 2024
in Crl.A.No.435 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.6637 of 2024
in Crl.A.No.435 of 2021

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... Petitioner

Vs.

State rep. by

1.The Assistant Commissioner of Police,
South Region, Tiruppur District.

2.The Inspector of Police,
Tiruppur South Police Station,
Tiruppur.

(Crime No.551 of 2016)

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 389 & 439 of the Criminal Procedure Code, seeking to suspend the sentence imposed by the learned Principal Sessions Judge, Tiruppur in Spl.S.C.No.35 of 2016 vide judgment dated 16.07.2021 and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER



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

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by the learned Principal Sessions Judge, Tiruppur on 16.07.2021 in Spl.S.C.No.35 of 2016 and enlarge him on bail, pending disposal of the Criminal Appeal.

2. The learned Principal Sessions Judge, Tiruppur in Spl.S.C.No.35 of 2016, has convicted the petitioner/A4 and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A4	Section 148 IPC	1 year rigorous imprisonment.
	Section 449 IPC	1 year rigorous imprisonment along with a fine of Rs.1000/- in default to undergo 1 month simple imprisonment.
	Section 302 IPC	Life imprisonment along with a fine of Rs.1,000/- in default to undergo 1 month simple imprisonment.



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3. Challenging the above conviction and sentence, the petitioner/A4 has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.K.Sudhakar, learned counsel appearing for the petitioner/A4 and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondents.

5. It is the case of the prosecution that A1 is the husband of one Kavitha; that the said Kavitha had illicit intimacy with the deceased and on account of that, there were frequent quarrels between A1 and the deceased; that there were cases and counter cases against each other; that aggrieved by the said illicit relationship, A1 went to the house of the deceased on 29.06.2016 at about 6.30 p.m. along with the other accused and in the presence of P.W.1 and P.W.2 attacked the deceased with weapons indiscriminately and the deceased succumbed to injuries.

6. The learned counsel for the petitioner/A4 submitted that the complaint was lodged belatedly after deliberation and both P.W.1 and P.W.2



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cannot be believed; that the presence of police in the scene of occurrence, even before lodging of the complaint was admitted by P.W.1; that P.W.1 had stated that the Investigating Officer seized the weapons on the date of occurrence, when the prosecution case is that the accused were arrested the next day, shows that the prosecution case is improbable. Hence, he prays for suspension of sentence imposed on the petitioner.

7. The learned Additional Public Prosecutor, per contra, submitted that P.W.1 and P.W.2 are reliable and natural witnesses and they were residing along with the deceased in the house and hence the Trial Court had rightly convicted the petitioner on the basis of the evidence and hence, prayed for dismissal of the petition.

8. By an order dated 22.03.2024 in Crl.M.P.Nos.19301 of 2023 & 3498 of 2024 in Crl.A.No.435 of 2021, we have considered the case of A1 to A3 & A6 and granted suspension of sentences to them by making the following observations:-

..... *“8. We have carefully considered the rival submissions and perused the records. It is seen from the*



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evidence of P.W.1 that she had admitted the presence of police in the scene of occurrence even before she had lodged the complaint and considering the allegations in the FIR, the possibility of deliberation and tutoring cannot be ruled out. Further the accused were arrested on the next day. However, P.W.1 would state that the police had seized all the weapons and she had seen the weapons at the police station on the day of occurrence. Hence the recovery is also doubtful. That apart only four persons were named in the FIR and there was no Test Identification parade conducted for the other two unknown persons. In such circumstances, we are of the view that the petitioners/appellants have a fair chance of success in the appeal. We hasten to add that this is an expression of our prima facie view.”

9. The aforesaid observations will squarely apply to case of the petitioner/A4 herein as well, as he stands on the same footing. Therefore, in view of the above, considering the period of incarceration of the petitioner and that the appeal is not likely to be taken up in the near future, we are inclined to grant relief of suspension of sentence to the petitioner herein/A4.



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10. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioner/A4 is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Tiruppur;
- (ii) The petitioner 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 petitioner 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 appear before the trial Court on any day, he 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.)

21.06.2024

Index: Yes/No

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Note: Issue Order Copy on 25.06.2024



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To

1.The Principal Sessions Judge,
Tiruppur.

2.The Assistant Commissioner of Police,
South Region,
Tiruppur District.

3.The Inspector of Police,
Tiruppur South Police Station,
Tiruppur.

4.The Superintendent,
Central Prison,
Coimbatore.

5.The Public Prosecutor,
High Court,
Madras.



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