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Crl.MP.No.7466/2024 in Crl.A.No.262/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.7466/2024 in Crl.A.No.262/2021

Vanitha

.. Petitioner/A2

Versus

State by

Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri.
(Cr.No.622/2015)

.. Respondent/Complainant

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in S.C.No.26 of 2017, on the file of the learned Principal Sessions Judge, Krishnagiri, by judgment dated 30.03.2021, till the disposal of the above mentioned appeal.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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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 petitioner vide judgement and order dated 30.03.2021 passed in S.C.No.26 of 2017 on the file of the learned Principal Sessions Judge, Krishnagiri and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is arrayed as A2 in the above Sessions Case, was convicted for the offence under Sections 302 r/w 109 and 201 r/w 109 of the IPC and sentenced as follows:

Offence under Section	Sentence imposed
302 r/w 109 IPC	To undergo life imprisonment and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for three months.
201 r/w 109 IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for one month
The sentences were directed to run concurrently.	

3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and she is seeking suspension of sentence



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and bail in the present petition.

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4. Heard Mr.K.Sudhakar, the learned counsel for the petitioner/A2 and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that A1 and A2 belonged to the same District; that A1 is a widower and A2 was married to one Sivanandam; that Sivanandam left for Malaysia, while A2 was pregnant; that while Sivanandam was in Malaysia, A2 gave birth to a male child, the deceased herein; that A1 and A2 developed intimacy; that since Sivanandam was planning to return from Malaysia, A1 and A2 decided to go to Tirupathi to set up their home; that since A1 felt that the deceased was disturbance to their life, decided to do away with the deceased; that on 16.08.2015, A1 assaulted the deceased and kicked him, due to which, the deceased hit on a wooden stool and fell down; that thereafter, A1 strangled the neck of the deceased and then took the deceased to the hospital, where he was declared dead; that thereafter, A1 and A2 in order to screen the offence, kept the body of the deceased in a Factory and returned to Andhra Pradesh.



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6.(i) Mr.K.Sudhakar, the learned counsel appearing for the petitioner/A2 submitted that the case is based on circumstantial evidence; that except the extra judicial confession, there are no other circumstances; and that A2 being the mother of the child, had no motive to cause the death of her child. He further stated that A1 is absconding and the trial is yet to commence as against him.

(ii) The learned counsel further submitted that the petitioner/A2 is in custody from 30.03.2021 and since the appeal is not likely to be taken up in the near future, he prayed for suspension of sentence.

7. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that apart from the extra judicial confession, the other circumstances that the deceased being taken by A1 and A2 in a autorickshaw and in a bus, is established through the evidence of PW11 and PW12; that the fact that the deceased was taken to a hospital at Andhra Pradesh is



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spoken to by PW14, where he was declared brought dead; that this Court had earlier dismissed the petitions for suspension of sentence vide order dated 01.12.2021 and 21.09.2022 in Crl.M.P.Nos.5906 of 2021 and 12162 of 2022, respectively. Hence, he prayed for the dismissal of the petition for suspension of sentence.

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

9. This Court had earlier dismissed the petition filed for suspension of sentence by order dated 01.12.2021 in Crl.M.P.No.5906 of 2021, by observing that since A1 had not lodged any complaint regarding the missing of her son, the question as to whether there is any missing link in chain of circumstances, can be adjudicated during the hearing of the appeal. The second petition for suspension of sentence was also dismissed by this Court on 21.09.2022 in Crl.M.P.No.12162 of 2022.

10. The petitioner is in custody since 30.03.2021. A1 is absconding



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and we are informed that trial is yet to commence against him. We also further find that the chain of circumstances is not complete to establish the offence of Section 302 of the IPC. The prosecution primarily relies upon the extra judicial confession. The extra judicial confession is said to have been given to a stranger, the VAO and therefore, in our view, does not inspire confidence and in any case cannot be the sole basis to hold the petitioner guilty. The evidence at best suggests screening of the offence as against the petitioner. The petitioner has been sentenced to three years rigorous imprisonment for screening of offence under Section 201 r/w 109 of the IPC. The petitioner is in custody for more than three years.

11. Therefore, considering the above and also the fact that the petitioner is in custody from 30.03.2021 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 petitioner herein.

12. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner/A2 is suspended on the following



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conditions:

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- (i) The petitioner 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 Principal Sessions Judge, Krishnagiri.
- (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; and
- (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 she is not able to appear before the trial Court on any day, she 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 her absence, as directed by the trial Court.

[M.S.R.,J.] [S.M.,J.]
05.07.2024

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Issue order copy by 08.07.2024

Upload the order copy forthwith.

Internet: Yes



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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

- 1.The Principal Sessions Judge,
Krishnagiri.
- 2.The Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri.
- 3.The Superintendent of Prison,
Central Prison for Women, Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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