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Crl.M.P.No.6352 of 2023
in Crl.A.No.514 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.No.6352 of 2023
in Crl.A.No.514 of 2023

1.Mr.Chinnakunju @ Kandasamy

2.Mr.Murugesan @ Murugan

... Petitioners

Vs.

State represented by Inspector of Police,
Omalur Police Station,
Salem – 636 455.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(3) and 439 of the Criminal Procedure Code, seeking to suspend the sentence imposed on the petitioners herein by the learned 1st Additional District and Sessions Judge, Salem dated 23.03.2023 in S.C.No.377 of 2016 and enlarge them on bail pending disposal of the appeal.

For Petitioners : Mr.Naveen Kumar Murthi
for Mr.M. Mahamani



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For Respondent : Mr.E. Raj Thilak,
Additional Public Prosecutor

ORDER

*(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 herein, by the learned 1st Additional District and Sessions Judge, Salem, dated 23.03.2023 in S.C.No.377 of 2016 and enlarge them on bail, pending disposal of the Criminal Appeal.

2. The learned 1st Additional District and Sessions Judge, Salem, in S.C.No.377 of 2016, has convicted the petitioners/accused and sentenced them as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A1	Section 302 (2 counts)	Life imprisonment each count and to pay a fine of Rs.20,000/- each count in default to undergo R.I. for one year each count.
	Section 302 r/w 109 IPC	Life imprisonment
	Section 201 r/w 302 IPC	Rigorous imprisonment for 3 years and to pay a fine of Rs.1000 in default to undergo 6 months R.I. total fine to be paid is Rs.41,000/-



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A2	Section 302 r/w 109 IPC Section 201 r/w 302 IPC	Life imprisonment R.I. for 3 years and to pay fine of Rs.1000/- in default to undergo 6 months R.I.
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Sentences to run concurrently.

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

4. Heard Mr.Naveen Kumar Murthi, learned counsel appearing for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. The case of the prosecution is that, one Sangeetha (not examined) and P.W.7, were in romantic relationship and they left to Ooty to get married; that the deceased persons namely Periannan and Sasikumar helped the said Sangeetha and P.W.7 to elope; that the first petitioner along with one Sankar (since deceased), who are related to the said Sangeetha, hence decided to do away with the deceased persons and



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on 27.02.1997, at about 9 p.m., the first petitioner and the deceased persons planned to consume liquor together and they brought brandy and asked Periannan to fetch tender coconut for mixing the same with brandy; that when Periannan climbed the tree, the first petitioner caught hold of his leg, tied a rope on his neck, tightened it and caused death by strangulation; that when Sasikumar returned back to the place of occurrence in his TVS 50 vehicle, the first petitioner tied a rope around the neck of Sasikumar, tightened it and strangled him to death. Thereafter, the first petitioner and the deceased Sankar took the bodies of the deceased persons in the second petitioner's Tractor and disposed the same in the land belonging to P.W.2. P.W.1, the Village Administrative Officer, on information that the bodies were lying in the land of P.W.2, lodged a complaint before the respondent/Police.

6. The learned counsel for the petitioners submitted that the case which is based on circumstantial evidence, has not been conclusively established by the prosecution. The said Sangeetha, who is said to have eloped with P.W.7, was not examined. P.W.7 has not supported the prosecution case with regard to motive and turned hostile. The other



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circumstances of last seen and the fact that the deceased persons were taken in a tractor, have not been conclusively established and therefore, the petitioners have a fair chance to succeed in the appeal.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent/Police submitted that the prosecution has established the case beyond reasonable doubt and the petitioners have not made out any case for suspension of sentence.

8. We have perused the records.

9. This is a case of circumstantial evidence. The motive alleged by the prosecution is that the deceased persons helped one Sangeetha to elope with P.W.7, which was not to the liking of the petitioners. P.W.7 turned hostile. Sangeetha has not been examined and therefore, the prosecution has not established the motive. P.W.4 & P.W.5 have been examined to prove that the petitioners were last seen with the deceased persons. P.W.5 had admitted that the deceased persons went with P.Subramaniam, who has not been examined. P.W.4 admits that she has



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not given complaint about the missing of her husband for nearly 7 days after he went along with the petitioners.

10. From the evidence on record, we are *prima facie* convinced that the petitioners have fair chances of succeeding in the appeal. Hence, we are inclined to suspend the sentence.

11. Accordingly, this Criminal Miscellaneous Oetition stands **allowed** and the sentence of imprisonment imposed on the petitioners is suspended on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned 1st Additional District and Sessions Judge, Salem.;
- (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;



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(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.)

02.01.2024

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

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To

- 1.The Inspector of Police,
Omalur Police Station,
Salem – 636 455.
- 2.The Additional Public Prosecutor,
High Court,
Madras.

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