



CrI.MP.No.8010/2023 in CrI.A.No.665/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.MP.No.8010/2023 in CrI.A.No.665/2023

Dhatchinamurthy

... Petitioner/A2

Vs.

State Rep. by

The Inspector of Police,
Sooramangalam Police Station,
Salem.

(Cr.No.808 of 2018)

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 374(2) of Cr.P.C. to suspend the sentence imposed by the learned Principal District and Sessions Judge, Salem dated 30.11.2022 in S.C.No.121 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.R.D.Ashok Kumar
for Mr.K.V.Shanmuganathan

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind



WEB COPY



Crl.MP.No.8010/2023 in Crl.A.No.665/2022



WEB COPY



CrL.MP.No.8010/2023 in CrL.A.No.665/2022

ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A2, by the learned Principal District and Sessions Judge, Salem in S.C.No.121 of 2019 by the judgment dated 30.11.2022, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Principal District and Sessions Judge, Salem in S.C.No.121 of 2019, convicted the petitioner herein/A2 for the offence under Sections 302 r/w 34 and 302 r/w 201 IPC and sentenced him as follows:

Sl.No.	Offence under Section	Sentence imposed
1	302 r/w 34 of IPC	To undergo life imprisonment and also to pay a fine of Rs.1000/- in default to undergo six months RI.
2	302 r/w 201 of IPC	To undergo three years imprisonment and also to pay a fine of Rs.10,000/- in default to undergo six months RI.
The sentences are directed to run concurrently.		



WEB COPY



Crl.MP.No.8010/2023 in Crl.A.No.665/2022



WEB COPY



CrL.MP.No.8010/2023 in CrL.A.No.665/2022

3.Challenging the above conviction and sentence, the petitioner/A2, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4. The case of the prosecution is that PW1 and deceased were brothers; that A1 is the cousin brother of the deceased; that the deceased due to a quarrel cut the neck of A1 with a blade, one month prior to the occurrence; that A1 had aversion and enmity against the deceased; that the petitioner/A2 and A3 are the friends of A1; that at the instance of A1 all the accused decided to do away with the deceased; that on 20.08.2018 at about 10.00pm, the accused assaulted the deceased with a wooden log and caused his death.

5. It is the further case of the prosecution that there were no eyewitness to the occurrence; that on 21.08.2018 an FIR was registered for 'man missing' on the complaint given by PW1. Finding that there were bloodstains in the parapet wall and the broken glass pieces near a well, the



investigating officer traced the the body of the deceased from an unused well and thereafter, altered the offence into Section 302 of IPC. Further, investigation revealed that the petitioner and the other accused were involved in the occurrence.

6. This Court by order dated 30.11.2023 in CrI.M.P.No.5661 of 2023 in CrI.A.No.457 of 2023 had suspended the sentence in respect of A3 on certain conditions.

7. We find from the perusal of the record that the circumstances relied on by the prosecution against this petitioner are the recovery of bloodstained clothes on his confession and the fact that he is the friend of A1. The bloodstained clothes have not been sent for scientific analysis to ascertain the blood group and to compare with that of the deceased. Thus, the circumstances against this petitioner/A2 has also not been proved by the prosecution and therefore, the petitioner has a fair chance of success in the appeal.

8. Further, considering the fact that the petitioner is in custody from



30.11.2022; that we have already suspended the sentence in respect of A3, who is similarly placed; and that the appeal is not likely to be taken up for hearing in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioner herein.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A2 is suspended on the following conditions:

- (i) The petitioner 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 Principal District and Sessions Judge, Salem;
- (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.



CrI.MP.No.8010/2023 in CrI.A.No.665/2023

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

12.02.2024

ars

Index : Yes / No

Note to office:

Upload the order copy forthwith

Issue order copy by 13.02.2024

M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

1.The Principal District and Session Judge,
Salem.

2.The Inspector of Police,
Sooramangalam Police Station,
Salem.

3.The Superintendent,
Central Prison, Salem.

4.The Public Prosecutor,
High Court, Madras.

CrI.MP.No.8010/2023 in CrI.A.No.665/2023



WEB COPY



Crl.MP.No.8010/2023 in Crl.A.No.665/2022

12.02.2024