



WEB COPY



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

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

Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

Saddam Hussein

... Petitioner/Accused

Vs.

State Rep. by,
The Inspector of Police,
Thaniyampadi Police Station
Thiruvannamalai District,
(Crime No.439/2011)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, praying to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahilla Court, at Thiruvannamalai District against the petitioner in S.C.No.8 of 2014 dated 07.09.2022 convicting the Appellant / Accused and enlarge the petitioner on bail.

For Petitioner : Mr.C.D.Johnson



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

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

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 petitioner by the learned Sessions Judge, Fast Track Mahilla Court, Thiruvannamalai District against the petitioner in S.C.No.8 of 2014 dated 07.09.2022 convicting the Appellant / Accused and release him on bail.

2. The learned Sessions Judge, Fast Track Mahilla Court, Thiruvannamalai District, in S.C.No.8 of 2014, has convicted the petitioner and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
Accused	U/s. 376 I.P.C	To undergo Life Imprisonment and to pay a fine amount of Rs.1,000/- in default to undergo one year simple imprisonment.
	U/s.302 I.P.C	To undergo Life Imprisonment and a fine amount of Rs.1,000/-



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

WEB COPY

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

4. Heard Mr.C.D.Johnson, the learned counsel appearing for the petitioner and Mr.E.Raj Thilak, the learned Additional Public Prosecutor, appearing for the respondent / police.

5. It is the case of the prosecution that the deceased was a mentally challenged person; that on 16.07.2011 at 10.00 p.m. the accused took the deceased had sexual intercourse and thereafter attempted to have sexual intercourse for the second time; and that when the deceased refused the same, he attacked he deceased with hands and thereafter caused her death by throwing a stone on her head.

6. The learned counsel for the petitioner submitted that the complaint against the petitioner is false,; that the circumstances have not been established by the prosecution; that the only circumstance that was



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

WEB COPY

relied on by the prosecution is that the petitioner and the deceased were last seen by PW.14 and PW.15, whose evidences cannot be believed and prayed for suspension of sentence.

7. Per contra, the learned Additional Public Prosecutor submitted that the prosecution had established its case through the evidence of PW.10 to PW.12, PW.14 and PW.15; besides the other circumstances and prayed for dismissal of the petition.

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

9. Admittedly, the circumstance established by the prosecution is that the petitioner was last seen with the deceased during the night on the date of occurrence i.e. on 16.07.2011. The prosecution has also not established that the victim was subjected to rape by the petitioner. The post mortem certificate and the serology report do not contain any symptom of sexual intercourse. It is also seen that the evidences of PW10



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

to PW.12 and their versions are inconsistent with one another. Therefore, the circumstance of last seen alone may not be sufficient in the absence of other circumstances, which have not been established. The petitioner, therefore, has fair chance of success in the appeal. However, we hasten to add that this is only our expression of our prima facie view.

10. Considering the above facts; that the petitioner is in custody from 17.08.2022 and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence and grant bail to the petitioner/accused.

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

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahilla Court, Thiruvannamalai District;



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

(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.)

12.04.2024

Index: Yes/No

kas

Note: Issue Order Copy on 15.04.2024



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

WEB COPY

To

1. Sessions Judge,
Fast Track Mahilla Court,
Thiruvannamalai District
- 2.The Inspector of Police,
Thaniyampadi Police Station
Thiruvannamalai District,
- 3.The Superintendent of Prison,
Central Prison,
Vellore,
- 4.The Public Prosecutor,
High Court,
Madras.



WEB COPY



Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

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

kas

Crl.M.P.No.8693 of 2023
in Crl.A.No.669 of 2023

12.04.2024