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CrI.M.P.No.12276 of 2022
in CrI.A.No.257 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM:

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

CrI.M.P.No.12276 of 2022
in CrI.A.No.257 of 2020

S.Rajkumar

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Namakkal Police Station,
Namakkal District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence passed by the learned Principal Sessions Judge, Namakkal in S.C.No.2 of 2013 on 28.02.2020 and enlarge the petitioner on bail, pending disposal of this CrI.A.No.257 of 2020.

For Petitioner : Mr.G. Karuppasamy Pandiyan

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



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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/third accused by the learned Principal Sessions Judge, Namakkal on 28.02.2020 in S.C.No.2 of 2013 and enlarge him on bail.

2. The learned Principal Sessions Judge, Namakkal, in S.C.No.2 of 2013, has convicted the petitioner/third accused and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A3	Section 120(B) of IPC	Life imprisonment along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 4 years.
	Section 364 of IPC	Rigorous imprisonment for 10 years along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 30 months.
	Section 302 r/w 120(B) of IPC	Life imprisonment along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 4 years.
	Section 392 r/w 120(B) of IPC	Rigorous imprisonment for 10 years along with a fine of Rs.10,000/- in default to undergo simple imprisonment for 30 months.
	Section 201 of	Rigorous imprisonment for 3 years along with a fine of Rs.5,000/- in default to



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	IPC	undergo imprisonment for 9 months.
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3. Challenging the above convictions and sentence, the petitioner/third accused, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.G. Karuppasamy Pandiyan, learned counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. It is the case of the prosecution that A4 was in need of money as his lorry was seized by the Finance Company and he sought help of the other accused to commit dacoity from the deceased; that on 19.02.2010 at about 1 P.M., A1, A3 and A5 deceitfully induced the deceased to sit inside Ambassador car and thereafter, took him to remote place, caused his death and took away his jewels and cash.



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6. The learned counsel for the petitioner submitted that the case which is based on the circumstantial evidence, has been established. The entire case rests on the confession of A1 and does not implicate recovery from the petitioner/third accused in any manner and therefore, prayed for suspension of sentence.

7. Per contra, the learned Additional Public Prosecutor submitted that the circumstantial evidence has been fully established by the prosecution and hence opposed for suspension of sentence.

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

9. We find from the records that A4 has already been granted suspension of sentence by this Court through its order dated 02.11.2020 in Crl.M.P.No.3965 of 2020 in Crl.A.No.231 of 2020. It is seen that the petitioner is also similarly placed. Even according to the Investigating Officer, there is no evidence to show that the car used by the accused for the commission of offence, belonged to the petitioner/third accused. There is



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no other evidence against the petitioner. Hence, we are of the view that the petitioner has a fair chance of success in the appeal.

10. Considering the above and the fact that the petitioner/third accused is in custody since 02.03.2020 and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence.

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

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.1, Namakkal;
- (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;



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(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.)

19.02.2024

Index: Yes/No

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Note: Issue Order Copy on 20.02.2024



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To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Judicial Magistrate No.1,
Namakkal.
- 3.The Inspector of Police,
Namakkal Police Station,
Namakkal District.
- 4.The Superintendent,
Central Prison,
Salem.
- 5.The Public Prosecutor,
High Court,
Madras.



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

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