



Crl.MP.No.10594 of 2023
in Crl.A.No.78 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.10594 of 2023

in

Crl.A.No.78 of 2020

Dinesh @ Dinesh Kumar

...Petitioner/Appellant/Accused

Versus

The State represented by
The Inspector of Police,
Yethapur Police Station,
Salem District.

Crime No.247 of 2012

...Respondent/Respondent/Complainant

Prayer:- Civil Miscellaneous Petition filed under Section 389 of Cr.P.C., to suspend the sentence imposed on the petitioner/accused in S.C.No.178 of 2015 dated 07.12.2019 on the file of III Additional District and Sessions Court, Salem and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.M.Sankarasubbu
for
Mr.D.Mario Johnson

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

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/appellant/accused, by Judgment dated 07.12.2019 passed in SC No.178 of 2015 on the file of the learned III Additional District and Sessions Judge, Salem, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner/accused in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
458 of the IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months.
394 of the IPC	To undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months.



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302 of the IPC

To undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months.

Sentences were ordered to run concurrently.

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

4. Heard Mr.M.Sankarasubbu, the learned counsel for the petitioner and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution is that the appellant had committed a murder for gain by illegal entry into the house of the deceased on 25.06.2012 at 3.30 a.m. and caused the death of the deceased by throwing a stone on the head and thereafter robbing her jewels.

6. Mr.M.Sankarasubbu, the learned counsel for the petitioner/accused, submitted that the petitioner/accused was arrested in connection with some



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other case and there is absolutely no evidence to connect the petitioner with the crime and has been falsely implicated; that the jewels recovered were not properly identified by the relatives of the deceased, and the evidence of the last seen of the petitioner near the house of the deceased is also an afterthought. Hence, he prayed for suspension of sentence to the petitioner.

7. Mr.E.Raj Thilak, the learned Additional Public Prosecutor for the respondent/State, *per contra*, submitted that the prosecution established the case beyond reasonable doubt and opposed the petition for suspension of sentence.

8. We have carefully considered the submissions on either side and perused the record.

9. We find that the prosecution had examined P.W.5, as a witness who had last seen the accused near the house of the deceased. However, she was examined belatedly and her evidence, in our view, is not reliable. Further, we also find that the relatives of the deceased have



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not identified the jewels alleged to have been recovered from the petitioner.

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Prima facie, we are of the view that the circumstances have not been conclusively established by the prosecution.

10. Considering the above facts and the fact that the petitioner is in custody from 07.12.2019, 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.

11. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended 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 independent sureties, each for a like sum to the satisfaction of the learned III Additional 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



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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 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.]
19.03.2024

dk
Speaking/Non-Speaking order
Neutral Citation: Yes/No

Issue order copy by 20.03.2024
Upload the order forthwith.



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Copy to:-

- 1.The III Additional District and Sessions Judge,
Salem.
- 2.The The Inspector of Police,
Yethapur Police Station,
Salem District.
- 3.The Superintendent of Prisons,
Central Prison, Salem.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J
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