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Crl.M.P.No.12703 of 2023
in Crl.A.No.527 of 2020

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

*(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 in the judgment and sentence dated 23.11.2020 in S.C.No.22 of 2016 on the file of the Fast Track Mahila Court (Sessions Court), Vellore District and enlarge the petitioner on bail pending disposal of the Criminal Appeal in Crl.A.No.527 of 2020.

2. The Fast Track Mahila Court (Sessions Court), Vellore District, in S.C.No.22 of 2016, has convicted the petitioner and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
Accused	U/s.449 IPC r/w 34 IPC	R.I. for 10 years and a fine of Rs.1,000/- in default to undergo R.I. for 3 months.
	U/s.302 r/w 34 IPC	Life imprisonment and to pay a fine of Rs.1,000/- in default R.I. for 3 months



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Accused	U/s.392 r/w 397 r/w 34 IPC	R.I. for 7 years and to pay a fine of Rs.1,000/- in default to undergo 3 months R.I.
	U/s.201 r/w 34 IPC	R.I. for 7 years and to pay a fine of Rs.1,000/- in default to undergo 3 months R.I.

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.S.Sairaman, the learned counsel for the petitioner and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor for the respondent police.

5. It is the case of the prosecution that the petitioner along with two other accused with an intention to commit robbery in the house of the deceased, trespassed into her house on 13.08.2014 at about 2.00 p.m. and attacked her with a knife on her neck, committed murder and robbed gold jewellery of the deceased viz. gold thali, gold bangles (4 Nos.) and other jewellery containing 23.5 sovereigns besides two watches and two mobile phones.



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6. The learned counsel for the petitioner submitted that the petitioner is in custody from 23.11.2020 and that the prosecution has not established the circumstances as against the petitioner and that the only circumstance that was relied upon by the prosecution is the recovery of gold jewellery on his arrest and that the same cannot be believed, as the witness, who attested the seizure mahazar namely P.W.5, the Village Administrative Officer, had signed the mahazar on 07.09.2014, though the prosecution case is that the recovery was made on 06.09.2014 when the accused was arrested in the public road. The learned counsel further submitted that the prosecution version that the appellant carried with him all the jewellery at the time of arrest to make it available for the investigation officer to seize it is improbable.

7. Per contra, the learned Additional Public Prosecutor submitted that as many as eleven articles were seized from the possession of the petitioner / appellant and the other circumstances of the case conclusively established the involvement of the petitioner.

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



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submissions.

9. We find from the seizure mahazar that P.W.5, the Village Administrative Officer, had signed the seizure mahazar on 07.09.2014, but the prosecution case is that they have seized them on 06.09.2014 after the accused was arrested on that date. Hence the time and manner of arrest and seizure projected by the prosecution is doubtful. Further, there is considerable force in the submissions of the learned counsel for the petitioner that the prosecution version that the petitioner carried and was in possession of all the jewellery when he was arrested is improbable and appears artificial. Therefore, we are of the prima facie view that the recovery is doubtful and there is no other evidence connecting the appellant with the case and he has fair chance of success in the appeal.

10. Considering, the above fact, that the petitioner is in custody from 23.11.2020 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.



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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 Judicial Magistrate, Katpadi.
- (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



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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.)

25.07.2024

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Note: Issue Order Copy on 26.07.2024

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