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Crl MP No.12652 of 2024 in Crl A No.428 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl MP No.12652 of 2024
in
Crl A No.428 of 2021

S.Bhuvaneswaran

... Petitioner /Accused 3

Vs.

The State Rep. by
The Inspector of Police,
Thevoor Police Station,
Salem District
Crime No.107 of 2015)

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Section 389(1) of the Cr.PC 1973, to suspend the sentence of imprisonment imposed in the judgement dated 11.08.2021 made in SC No.26 of 2017 on the file of the learned III Additional District and Sessions Judge, Salem and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.B.Mohan

For Respondent : Mr.S.Raj Kumar
Additional Public Prosecutor



ORDER

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This Criminal miscellaneous petition has been filed seeking to suspend the sentence of imprisonment imposed in the judgment dated 11.08.2021 made in S.C.No.26 of 2017 on the file of the learned III Additional District and Sessions Judge, Salem and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. The petitioner/Accused No.3 in the above Sessions Case, were convicted and sentenced as follows:

Offence under Sections	Sentence imposed
120(B) r/w 302 IPC	To undergo life imprisonment along with fine of Rs.5000/- each in default, to undergo rigorous imprisonment for six months.
341 IPC	To undergo one month rigorous imprisonment
U/s.201 r/w 302 of IPC	To undergo five years of Rigorous imprisonment + Fine of Rs.3,000/- in default to undergo three months of rigorous imprisonment.
	All the sentences shall run concurrently



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

4. Heard Mr.B.Mohan, learned counsel for the petitioner and Mr.S.Raj Kumar, learned Additional Public Prosecutor, for the respondent.

5. The case of the prosecution is that the deceased is the husband of A1. The first accused and the second accused were in illegal intimacy for more than four years; since the deceased was in hindrance to their relationship, A1 and A2 decided to murder him with the help of A3; on 28.05.2015 at about 8.30 p.m., when A1 and the deceased were on the way to home in a two wheeler, A2 and A3 followed them in an another two wheeler with iron pipe. When the deceased reached at Eduthinnimedu, A2 and A3 stopped the husband of A1 and attacked with iron pipe, due to which, he succumbed to the injuries; in order to escape from the offence, they threw the body of the deceased behind the bush.



6. The learned counsel for the petitioner submitted that the prosecution case which is a case on circumstantial evidence, has not been established that the entire case based on the extra judicial confession said to have been given by A2 to the Village Administrative Officer, who was examined as P.W.1, 25 days after the occurrence; in the absence of any other evidence to corroborate the said extra judicial confession which is given to a stranger, the petitioner / appellant has a fair chance of success in the appeal. He further submitted that Accused No.1 and 2 were enlarged on bail by this Court vide order dated 12.07.2024 in Crl MP Nos.2979 and 2980 of 2024.

7. The learned Additional Public Prosecutor per contra submitted that the trial Court was right in convicting the petitioner and hence, prayed for dismissal of this petition.

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

9. Considering the fact that the petitioner is in judicial custody from 11.08.2021 and the accused No.1 and 2 were granted bail by this



Court 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.

10. 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 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



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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 their absence, as directed by the trial Court

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Issue order copy by 28.11.2024

Upload the order copy forthwith.



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To

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1. The III Additional District and Sessions Judge,
Salem.
2. The Inspector of Police,
Thevoor Police Station,
Salem District.
3. The Superintendent of Prisons,
Central Prison, Salem.
4. The Public Prosecutor,
Madras High Court.



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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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