



WEB COPY



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

Arun Kumar

...Petitioner/Accused

Vs.

The State Represented by its
The Inspector of Police,
Gandhi Kuppam Police Station
Krishnagiri
(Crime No.227/2013)

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 of Cr.P.C. to suspend the sentence imposed in S.C.No.118 of 2015 on the file of the Additional District Sessions Court, Krishnagiri, dated 27.01.2020 and enlarge the petitioner on bail until the pending disposal of the above Criminal Appeal.

For Petitioner : Mr.S.Senthil Murugan
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor



WEB COPY



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A1, by the learned Additional District Sessions (Fast Track Court) Judge, Krishnagiri, in S.C.No.118 of 2015, by the judgment dated 27.01.2020, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Additional District Sessions (Fast Track Court) Judge, Krishnagiri, in S.C.No.118 of 2015, convicted the petitioner herein/A1 and sentenced him as follows:

Accused (A1)	Offence	Sentence Imposed
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Simple imprisonment.
	392 IPC	To undergo fourteen years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Six months Simple imprisonment.



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

3.Challenging the above conviction and sentence, the petitioner/A1, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr. Mr.S.Senthil Murugan, learned Counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the deceased was working as a driver of the Truck bearing Registration No.1109 TN23 BQ1024; that he was transporting steel pipes weighing 6 tons worth about Rs.5,00,000/- from a Company by name Bhushan Power and Steel Limited, Bangalore, to Ambattur; that while transporting the same he stopped his vehicle at M/s. Sree Priya Carriers Company, Hosur, to get the consignment receipts; that the appellant (A1) along with A2 introduced himself as the employee of M/s. Sree Priya Carriers Company and asked the deceased to drop both the accused persons at Bargur; that they got into the vehicle and on the same day about 10 p.m. the accused persons asked the deceased to stop the vehicle at a High School on the



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

WEB COPY

Krishnagiri-Vaniyampadi Road and assaulted the deceased by using a knife and caused his death. It is the further case of the prosecution that P.W.1, the Village Administrative Officer, on coming to know that the dead body of the deceased was found near the school, had given a complaint to the police, pursuant to which, P.W.18 took up investigation; that on 20.11.2013 when P.W.19 along with the other police officials were conducting a routine vehicle check up, the appellant along with the 2nd accused came in a Hero Honda bike and on enquiry it was revealed that they had caused the murder of the deceased and sold the steel pipes in the truck to A3.

6. Learned Counsel for the appellant submitted that the case of the prosecution merely rests on recovery made from the shop of A3; that according to P.W.21, the owner of the consignment, 12 tons of steel pipes were consigned. However, the case of the prosecution is that only 6 tons of steel pipes were transported. Further, P.W.21 who identified the steel admitted that there were no identification features to definitely state that the steel belonged to their company; that it is common for the steel company to paint the steel in yellow. The learned counsel further submitted that the prosecution had not explained as to what



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

WEB COPY

happened to the remaining 6 tons of steel pipes said to have been consigned.

7. The learned Additional Public Prosecutor, per contra, submitted that the recovery of steel pipes from A3 shop establishes the prosecution's case and that the Trial Court had rightly convicted the appellant and the other accused. P.W.21 had identified the steel pipes and therefore, the appellant has not made out any ground for suspension of sentence.

8. We perused the relevant evidence and the judgment. Admittedly the appellant and the other accused were arrested four months after the alleged occurrence when the police were carrying out a routine vehicle check up. Apart from the recovery made from the shop of A3, there is no evidence connecting the appellant with the crime. The prosecution had not also established through any acceptable evidence that the appellant had sold the steel pipes to A3. That apart, we also find that it is the P.W.21's version that 12 tons of steel pipes were consigned in the truck. However, this is contrary to the prosecution's case. The prosecution has not explained as to what happened to the remaining 6 tons. Further, we find that another consignment note was prepared by P.W.8



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

WEB COPY

(Manager) to show that as if only 6 tons of steel pipes were consigned, which was marked as D.W.1. P.W.8 admitted that the said consignment note was prepared after the seizure was made from A3 shop. This throws a serious doubt in the prosecution case. The identification of the accused by the witnesses who had allegedly seen the appellant in the truck at the time of occurrence is also highly doubtful. Therefore, for the above reasons, we find that the appellant has a fair chance of succeeding in the appeal. Considering the above and the fact that the appellant is in incarceration since 27.02.2020, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional District Judge, District Court, Krishnagiri.
- (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



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

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.)
02.01.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 03.01.2024
Upload the order copy forthwith

To

1. The Additional District Judge,
District Court, Krishnagiri.
2. The Inspector of Police,
Gandhi Kuppam Police Station
Krishnagiri
3. The Superintendent,
Central Prison, Vellore
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

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

bga

Crl.MP.No.16439 of 2023
in Crl.A.No.1118 of 2023

Dated: 02.01.2024