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Crl.MP.No.18865 of 2023
in Crl.A.No.128 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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in Crl.A.No.128 of 2023

1. Muthu Kumaran

2. Kanniappan

3. Kalaimani

...Petitioners/ Accused

Vs.

The State Represented by
The Inspector of Police,
Mecheri Police Station
Salem District
Crime No.159 of 2016

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence passed in S.C. No.21 of 2017 passed by the Additional District Judge, (Fast Track Court), Mettur, Salem District, by judgment dated 15.12.2022 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal C.A. No.128/2023 before this Hon'ble Court.



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For Petitioner : Mr.B. Vasudevan
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind,C.

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 petitioners in S.C.No.21 of 2017 on the file of the Additional District Judge, Fast Track Court, Mettur, Salem District, dated 15.12.2022 and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned Additional District Judge, Fast Track Court, Mettur, Salem District, in S.C.No.21 of 2017, convicted the petitioners herein and sentenced them as follows:

Offence	Sentence Imposed
120(B)(1) r/w 302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six months Rigorous imprisonment.



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449 IPC	To undergo Ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six months Rigorous imprisonment.
302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six months Rigorous imprisonment.

3.Challenging the above conviction and sentence, the petitioners/accused have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.B. Vasudevan, learned Counsel appearing for the petitioners and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the petitioners are related to the deceased and the defacto complainant/wife of the deceased; that they own lands adjacent to the lands of the defacto complainant; that there were disputes between the two families with regard to the claim over a particular land; that on



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07.05.2016 the petitioners hatched a conspiracy to do away with the deceased and on 08.05.2016, at about 2.30 a.m., the petitioners went to the house of the deceased in a motor cycle, armed with wooden logs and iron rods, and attacked the deceased indiscriminately and that the deceased sustained grievous injuries and thereafter succumbed to injuries on 13.05.2016.

6. The learned counsel for the petitioners submitted that though the prosecution claimed that the deceased informed about the assailants and the attack made on him to P.W.1 to P.W.6, none of the witnesses could be believed; that the deceased was first taken to hospital where P.W.16 was working as a nurse, who had been informed that the deceased sustained injuries due to fall from a cot; that thereafter the deceased was taken to a hospital where P.W.17 was working, wherein they had informed the Doctor (P.W.17) that the deceased was assaulted by unknown persons and the weapons used for the assault were not known and that subsequently the case was improved and the petitioners were implicated. The learned counsel, therefore, submitted that the case of the prosecution is an after thought and that the FIR originally registered for the offence under Section 325 IPC also reached the Magistrate belatedly after the



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death of the deceased was reported to the police. Hence, he prays for suspension of sentence imposed on the petitioners.

7. The learned Additional Public Prosecutor, per contra, submitted that P.W.1 to P.W.6 have given cogent evidence to the fact that the deceased told them that the petitioners attacked him with iron rods and wooden logs. Therefore, he opposed grant of suspension of sentence.

8. We have carefully considered the rival submissions. It is the case of the prosecution that the deceased was initially taken to Government Primary Health Centre where P.W.16 was working as a nurse. P.W.16 had deposed that the persons accompanying the deceased informed her that the deceased fell down from the cot. It is also seen that thereafter, the deceased was taken to Omandurar Government Hospital, wherein P.W.17 treated the deceased. P.W.17 had made entries in the Accident Register (Ex.P10) stating that the deceased was attacked by unknown persons and that the weapons used for attacking the deceased were not known. Further we also find that the FIR which was initially registered under Section 325 IPC also reached the Magistrate four days after the



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occurrence. Considering the fact that the earliest versions given by the witnesses to the Doctor (P.W.17) and the nurse (P.W.16) is contrary to the prosecution case, we are of the view that the version of P.W.1 to P.W.6 is doubtful and the petitioners have fair chances of success in the appeal. However, we hasten to add that the above observations are based on our prima facie view.

9. Considering the above facts and since the petitioner is in incarceration from 15.12.2022 and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate Court No.2, Mettur.
- (ii) The petitioners 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 petitioners 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 they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.

(M.S.R., J.) (S.M., J.)
29.02.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 01.03.2024
Upload the order copy forthwith

To

1. The Judicial Magistrate Court No.2, Mettur.
- 2.The Inspector of Police,
Mecheri Police Station
Salem District
Crime No.159 of 2016
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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