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Crl.MP.No.17426/2023 in Crl.A.No.1070/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.17426/2023 in Crl.A.No.1070/2022

1.Kasi
2.Balamurugan
3.Elumalai
4.Seenu @ Seenuvasan .. Petitioners/A1 to A4

Versus

State by
Inspector of Police,
Polur Police Station,
Tiruvannamalai District.
(Cr.No.162/2007) .. Respondent/Complainant

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in S.C.No.116 of 2010, on the file of the learned Principal District and Sessions Judge, Tiruvannamalai, Tiruvannamalai District, by judgment dated 03.03.2022, till the disposal of the above mentioned appeal.

For Petitioners : Mr.John Sathyan, Sr. Counsel
for Mr.L.Mahendran



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For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

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 petitioners vide judgement and order dated 03.03.2022 passed in S.C.No.116 of 2010 on the file of the learned Principal District and Sessions Judge, Tiruvannamalai, Tiruvannamalai District, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who are arrayed as A1 to A4 in the above Sessions Case, were convicted and sentenced by the trial Court as follows:

Accused No.	Offence under Section	Sentence imposed
A1, A3 and A4	302 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years.
	364 IPC	Each of them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years.
	120 (B) IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo



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		rigorous imprisonment for two years.
	201 IPC	Each of them to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two months.
	341 IPC	Each of them to undergo rigorous imprisonment for one month and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for one week.
A2	302 r/w 109 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years.
	364 r/w 109 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years.
	120 (B) IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years.
	201 r/w 109 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two months.
The sentences were directed to run concurrently.		

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

4. Heard Mr.John Sathyan, the learned senior counsel for the



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petitioners/A1 to A4 and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5.(i) It is the case of the prosecution that the deceased, who was aged about 72 years, had filed a case against the petitioners 1 and 2/A1 and A2 for forging his signature and creating a false sale deed in respect of his lands; that when the case was posted for obtaining his specimen signature for comparison, the petitioners/accused decided to do away with the deceased; that on 28.04.2007 at about 6.30 a.m., the deceased had gone to a shop near Polur bus stand to buy newspapers and tender coconut and thereafter, he did not return and hence, a complaint was lodged by PW1, the son of the deceased.

(ii) It is the further case of the prosecution that the petitioners along with the Approver-PW39, abducted the deceased in a Mahindra Van and took him to a culvert and the petitioners/accused caused his death by gagging his mouth and closing his nose, as a result of which, the deceased died; that with an intention to screen the offence, they took the body of the



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deceased and buried underneath the culvert; and that one week after the occurrence, the body was found, which could not be identified and after the skull was retained for identification, the body was buried.

6. (i) Mr.John Sathyan, the learned senior counsel for the petitioners/A1 to A4 submitted that the prosecution rests on the evidence of the approver-PW39, PW24 and PW25, who speak about the 1st petitioner paying Rs.50,000/- for committing murder of the deceased and the recovery of watch and hearing-aid of the deceased on the confession of the petitioners/accused. He pointed out to the evidence of PW39 and submitted that he did not become an approver voluntarily and therefore, his evidence is highly doubtful. He also pointed out to the evidence of PW24 and PW25, who had admitted in the cross examination that they had identified the accused with the help of the police officers.

(ii) The learned senior counsel further submitted that the recovery is also doubtful and cannot be taken as a circumstance against the petitioners and therefore, the petitioners have a fair chance of success in the appeal.



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(iii) The learned senior counsel further submitted that the petitioners/accused are in custody from 03.03.2022 and since the appeal is not likely to be taken up in the near future, he prayed for suspension of sentence.

7. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that the investigation was originally done by the respondent police and thereafter, transferred to the CBCID; that the prosecution case is established through the evidence of approver-PW39, which is corroborated by the evidence of other prosecution witnesses; and that there is no infirmity in the judgment of the trial Court. Hence, he prayed for the dismissal of the petition for suspension of sentence.

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

9. (i) As regards the evidence of approver-PW39, it is seen from the



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cross examination that he had admitted that he had earlier complained against the police that they tortured him and also admitted that he had agreed to become an approver after the police induced him by promising his release from the case. We are therefore of the *prima facie* view that the evidence of the approver is doubtful.

(ii) PW24 would state that he received a sum of Rs.50,000/- from the 1st petitioner/A1 for killing the deceased and since, he did not get proper henchmen, he could not carry out the assignment and returned the money received by him. However, in the cross examination, he had admitted that he identified A1, the 1st petitioner herein, after the CBCID police identified A1 to him, when he came to Court.

(iii) PW26 who spoke about the deceased being taken in a van has not stated about this fact earlier and had stated this fact before the CBCID police one year after the occurrence. Hence, in view of above infirmities

pointed out by the learned senior counsel for the petitioners/accused, we are



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prima facie convinced that the petitioners have a fair chance of success in the appeal.

10. Therefore, in view of the above and considering the fact that the petitioners are in custody from 03.03.2022 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 petitioners herein.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioners/A1 to A4, is suspended on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two independent sureties, each for a like sum to the satisfaction of the learned Principal District and Sessions Judge, Tiruvannamalai, Tiruvannamalai District;
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial



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Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(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.]
27.06.2024

ars

Issue order copy by 28.06.2024

Upload the order copy forthwith.

Internet: Yes



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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

1.The Principal District and Sessions Judge,
Tiruvannamalai, Tiruvannamalai District.

2.The Inspector of Police,
Polur Police Station,
Tiruvannamalai District.

3.The Superintendent of Prison,
Central Prison, Vellore.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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