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Crl.M.P.No.17442 of 2023
in Crl.A.No.973 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.17442 of 2023
in Crl.A.No.973 of 2022

1.K. Marappan

2.Tmt. Saroja

... Petitioners

Vs.

The State rep. by
Inspector of Police,
Gengavalli Police Station,
Salem District.
Crime No.106/2019

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence passed by the learned I Additional District and Sessions Judge, Salem, in S.C.No.89 of 2020 judgment dated 22.07.2022 and they may be enlarged on bail, till disposal of the criminal appeal.

For Petitioners : Mr.T. Shanmugaboopathi

For Respondent : Mr.E. Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind



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Crl.M.P.No.17442 of 2023
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ORDER

*(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 petitioners/accused by the learned I Additional District and Sessions Judge, Salem on 22.07.2022 in S.C.No.89 of 2020 and enlarge them on bail, pending disposal of the Criminal Appeal.

2. The learned I Additional District and Sessions Judge, Salem, in S.C.No.89 of 2020, has convicted the petitioners/accused and sentenced them as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A1	Section 302 of IPC	Life imprisonment and a fine of Rs.5,000/- in default to undergo further period of 1 year simple imprisonment.
A2	Section 302 of IPC	Life imprisonment and a fine of Rs.5,000/- in default to undergo further period of 1 year simple imprisonment.



Crl.M.P.No.17442 of 2023
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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.T. Shanmugaboopathi, learned counsel appearing for the petitioners and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. The case of the prosecution is that on the ground of land dispute between the petitioners and the deceased, on 16.06.2019 at about 8.00 am, when the deceased along with his grandson and daughter was grazing goats in his land, the petitioners/accused attacked the deceased by wooden log and bill hook.

6. The learned counsel for the petitioners submitted that the petitioners are aged persons and have been falsely implicated in this case because there was a land dispute between the petitioners and the family of the deceased. In the earliest version in Ex.P1, P.W.1 had stated that four persons had attacked the deceased including the petitioners. However, in



Crl.M.P.No.17442 of 2023
in Crl.A.No.973 of 2022

WEB COPY

the deposition, he had stated that only the petitioners had attacked the deceased and overt acts attributed to the petitioners are also different. The learned counsel further submitted that the medical evidence is contrary to the ocular evidence and therefore, the petitioners have fair chance of success in the appeal.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent/Police submitted that there are four eye witnesses to the occurrence and the defence have not elicited any information in the cross examination to doubt their versions and hence, submitted that the Trial Court has rightly convicted the petitioners and opposed for suspension of sentence.

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

9. On perusal of the records, we find that there are substantial improvements in the versions of the eye witness with regard to the overt acts of the petitioners. Initially they had alleged that four persons attacked



Crl.M.P.No.17442 of 2023
in Crl.A.No.973 of 2022

the deceased. However, in the deposition they had stated only two persons attacked the deceased namely the petitioners herein. They had also attributed a specific overt act to the second petitioner who is a lady aged about 66 years which did not find place in their earlier version. Further, we find that the medical evidence also does not corroborate the evidence of the eye witness.

10. Considering the above facts and the fact that the petitioners are aged persons and are in custody since 22.07.2022 and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence.

11. At this juncture, the learned Additional Public Prosecutor submitted that since there is an enmity between the family of the deceased and the petitioners, it would be appropriate if the petitioners are directed to stay away from the place of occurrence.

12. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of imprisonment imposed on the petitioners is



Crl.M.P.No.17442 of 2023
in Crl.A.No.973 of 2022

suspended on the following conditions:

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- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned I Additional District and Sessions Judge, Salem;
- (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;
- (iii) The petitioners shall stay at Coimbatore and shall not enter their village in Salem District, until further orders. The petitioners shall appear before the trial Court once in a month at 10.30 a.m., i.e. on the first Monday of every month, 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.)

30.01.2024

Index: Yes/No

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Note: Issue Order Copy on 01.02.2024



Crl.M.P.No.17442 of 2023
in Crl.A.No.973 of 2022

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



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Crl.M.P.No.17442 of 2023
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and
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