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Crl.MP.Nos.17276 and 17277/2023
in Crl.A.Nos.1226 and 1227/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.Nos.17276 and 17277/2023

in

Crl.A.Nos.1226 and 1227/2023

Crl.M.P.No.17276 of 2023

Prem Kumar

... Petitioner/A2

Versus

State by,
The Inspector of Police,
Yercaud Police Station,
Salem District.
(Cr.No.211 of 2017)

...Respondent/complainant

Crl.M.P.No.17277 of 2023

Kollapatti Kumar @ Kumar

... Petitioner/A1

Versus



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in Crl.A.Nos.1226 and 1227/2023

State by,
The Inspector of Police,
Yercaud Police Station,
Salem District.
(Cr.No.211 of 2017)

...Respondent/complainant

Common Prayer:- Criminal Miscellaneous Petitions have been filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.339 of 2018 dated 15.09.2023 on the file of the learned II Additional District and Sessions Judge, Salem, and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

For Petitioners
in both Crl.M.Ps. : Mr.V.Parthiban

For Respondents
in both Crl.M.Ps. : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

COMMON ORDER

[Order of the Court was made by SUNDER MOHAN, J.]

These Criminal Miscellaneous Petitions have been filed seeking to suspend the sentences imposed on the petitioners/A1 & A2 by Judgment and order dated 15.09.2023 passed in S.C.No.339 of 2018 on the file of the learned II Additional District and Sessions Judge, Salem, and to enlarge the



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petitioners on bail pending disposal of the appeals.

2. The petitioners, who are arrayed as A1 & A2 in the above Sessions Case, was convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A1 & A2	302 of the IPC	Each of them sentenced to undergo rigorous imprisonment for life and each to pay a fine of Rs.10,000/- in default each to undergo simple imprisonment for six months.

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

4. Heard Mr.V.Parthiban, the learned counsel appearing for the petitioners/A1 & A2 and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the petitioners/A1 and A2 were tried along with seven other accused before the Trial Court; that accused were residing near the house of the deceased; that the first accused (petitioner in Crl.M.P.17277 of 2023) about five years prior to the



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occurrence encroached into a land belonging to the deceased and hence, dispute arose between the families and thereafter was compromised; that the deceased thereafter developed illegal intimacy with the wife of the first accused, as a result of which all the accused entered into a criminal conspiracy to cause the death of the deceased; that pursuant to the conspiracy on 06.08.2017 at about 11.00 a.m., the first accused called the deceased and all the accused including the first and second accused caused injuries to the deceased with knives.

6. Mr.V.Parthiban, learned counsel appearing for the petitioners/A1 and A2 submitted that all the accused except the petitioners herein were acquitted by the Trial Court; that the case is based on circumstantial evidence and has not been conclusively established by the prosecution and all the witnesses turned hostile and prayed that the sentences imposed on the petitioners/A1 and A2 may be suspended.

7. Mr.E.Raj Thilak, learned Additional Public Prosecutor *per contra* submitted that first accused had several previous cases and the prosecution had established the motive by examining P.W.4 and P.W.5 and that the



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recovery from the accused conclusively established the involvement of the accused and hence, he prayed for dismissal of the petitions.

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

9. P.W.1 to P.W.3 the wife, daughter and son respectively of the deceased and examined to prove motive turned hostile. Thus, the prosecution failed to establish the motive conclusively. There is no other circumstance except for recoveries of material objects from the accused. It is well settled that in a case based on circumstantial evidence, all the circumstances should be conclusively established and has to form a complete chain pointing out only to the guilt of the accused. In the instant case, the prosecution has failed to establish the circumstances against the petitioners. Therefore, we are of the view that the petitioners have the fair chance of success in the appeals. We hasten to add that the above observations are only an expression of our *prima facie* view.



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10. Considering the above and the fact that the petitioners are in custody since 15.09.2023 and the appeals are 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/A1 & A2.

11. Accordingly, this criminal miscellaneous petitions stands **allowed** and the sentence imposed on the petitioners/A1 & A2 is suspended on the following conditions:

- (i) Each of the petitioners 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 II Additional District and Sessions Judge, Salem;



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(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; and

(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 appeals 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.

dk

[M.S.R.,J.] [S.M.,J.]
04.03.2024

Issue order copy by 05.03.2024

Upload the order copy forthwith.

Internet: Yes

Copy to:-

1. The II Additional District and Sessions Judge,
Salem.
2. The Inspector of Police,
Yercaud Police Station,
Salem District.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

3.The Superintendent of Prisons,
Central Prison, Coimbatore.

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

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