



WEB COPY



Crl.M.P.No.17347/2023 in Crl.A.No.1231/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

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

Crl.M.P.No.17347 of 2023
in Crl.A.No.1231 of 2023

Mr.Gopi @ Karuna
S/o.Ramakrishnan

... Petitioner

Vs.

The Inspector of Police,
D-4, Valasaravakkam Police Station,
Chennai.
(Crime No.81/2003)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence imposed by the learned II Additional District and Sessions Court, Poonamallee in Sessions Case No.63 of 2006 on 27.02.2023 and enlarge the petitioner on bail, pending disposal of the said Criminal Appeal No.1231 of 2023.

For Petitioner : Mr.M.Mohamed Saifulla

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



WEB COPY



Crl.M.P.No.17347/2023 in Crl.A.No.1231/2023

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 petitioner/accused by the learned II Additional District and Sessions Court, Poonamallee on 27.02.2023 in S.C.No.63 of 2006 and enlarge him on bail.

2. The learned II Additional District and Sessions Court, Poonamallee, in S.C.No.63 of 2006, has convicted the petitioner/accused and sentenced him as follows:-

	<i>Offence</i>	<i>Sentence imposed</i>
<i>Accused</i>	Section 302 of IPC	Life Imprisonment with fine of Rs.1000 and in default to undergo further period of six months Rigorous imprisonment;

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



4. Heard Mr.M.Mohamed Saifulla, learned counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5.It is the case of the prosecution that the appellant had obtained a loan from the deceased and failed to repay the same; that the deceased demanded the loan amount and also threatened the appellant that he would spoil his reputation; that enraged by the said act of the deceased on 08.03.2003, at about 05.30 a.m., the appellant attacked the deceased with a billhook on his hand and other parts of the body and caused his death.

6.The learned counsel for the petitioner submitted that the appellant is in custody from the date of his arrest and remand during investigation, which is in the year 2019; that the prosecution has failed to establish the involvement of the appellant beyond reasonable doubt; that PW1 did not identify the appellant in the Test Identification Parade and even in his deposition, he did not initially identify the appellant but, when he was recalled after 5 years, he had identified the appellant; that such identification is highly doubtful and that PW10, the other eye-witness is not



Crl.M.P.No.17347/2023 in Crl.A.No.1231/2023

a reliable witness and the reliance placed on these two witnesses cannot be sustained.

7.The learned Additional Public Prosecutor per contra, submitted that the prosecution has proved its case beyond reasonable doubt, that both PW1 and P10, eye-witnesses to the incident have supported the case of the prosecution. Therefore, there is no infirmity in the Judgment of the trial Court.

8. On perusal of records, it is seen that PW1 and PW10 are eye-witnesses to the occurrence; PW1 is the son of the deceased, PW8 is the Magistrate who conducted the Test Identification Parade and he has stated that PW1 did not identify the appellant in the Test Identification Parade. Further, when PW1 was examined before the trial Court on 23.08.2018, he did not identify the appellant, since he was not present in Court. PW1 was recalled on 20.01.2023 and he identified the appellant during such examination. Since there was substantial delay between the occurrence and the date of the second examination, the identification in Court in our view, would have no value, especially when PW1 did not identify the appellant in



Crl.M.P.No.17347/2023 in Crl.A.No.1231/2023

the Test Identification Parade. Further, we see that PW10 did not complain about the occurrence to any one and no explanation has been offered by him for not doing so. His evidence is also highly doubtful.

9. In such circumstances, we are of the view that the petitioner has fair chances of success in the appeal and has made out a *prima facie* case for suspension of sentence. Hence, we are inclined to suspend the sentence imposed on the petitioner/accused by the learned II Additional District and Sessions Court, Poonamallee on 27.02.2023 in S.C.No.63 of 2006 .

10. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioner/accused is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, each for a like sum to the satisfaction of the learned Judicial Magistrate Court-I, Poonamallee;
- (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;



Crl.M.P.No.17347/2023 in Crl.A.No.1231/2023

WEB COPY

(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 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.)

13.06.2024

Index: Yes/No

Tsg

Note: Issue Order Copy on 14.06.2024



Crl.M.P.No.17347/2023 in Crl.A.No.1231/2023

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

Tsg

To

- 1.The II Additional District and Sessions Court,
Poonamallee.
- 2.The Judicial Magistrate Court-I,
Poonamallee.
- 3.The Inspector of Police,
D-4, Valasaravakkam Police Station,
Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal.
- 5.The Public Prosecutor,
High Court,
Madras.

Crl.M.P.No.17347 of 2023
in Crl.A.No.1231 of 2023

13.06.2024