



Crl.MP.No.18298/2023 in Crl.A.No.1072/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.18298/2023 in Crl.A.No.1072/2023

1. Bharathi
2. Santhamani .. Petitioners/A4 & A5

Versus

State rep.by
The Inspector of Police
Magudanchavadi Police Station,
Salem District.
(Cr.No.261 of 2017) .. Respondent

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.376 of 2018 dated 16.08.2023 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 Appeal.

For Petitioners : Mr.V.Gopinath, Sr. Counsel
for Mr.C.Ramkumar

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



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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/A4 & A5 by judgment and order dated 16.08.2023 passed in S.C.No.376 of 2018 on the file of the learned II Additional District and Sessions Judge, Salem, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who are arrayed as A4 & A5 in the above Sessions Case, was convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A4 & A5	302 IPC	Each of them sentenced to undergo RI for life and to pay a fine of Rs.5,000/- in default to undergo SI for six months.
	120B r/w 302 IPC	Each of them sentenced to undergo RI for life and to pay a fine of Rs.2,000/- in default to undergo SI for three months.
	148 IPC	Each of them to undergo RI for three years.
	506(ii) IPC	Each of them to undergo RI for two years.
Sentences were ordered to run concurrently.		



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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.V.Gopinath, the learned Senior counsel appearing for the petitioners/A4 & A5 and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the accused and the deceased were closely related to each other and the petitioners/A4 & A5 are the wife and mother of A1, respectively; that there was a dispute between the family members of the accused and the deceased, with regard to partitioning of their ancestral property and due to that enmity, on 30.06.2017 at 8.00 a.m., when the deceased was alone at his home, the accused quarrelled with the deceased and abused him in filthy language and thereafter attacked him with iron rod and wooden logs.

6. Mr.V.Gopinath, learned senior counsel appearing for the petitioners submitted that the petitioners are the wife and the mother of A1 and have been falsely implicated. The *overt acts* attributed to them are that they used



wooden logs and attacked the deceased on the right thigh, right elbow and left leg below knee and that there are no corresponding injuries as per the opinion of the postmortem doctor [PW11] which would show that the prosecution's case is false. Hence, he prayed that the sentence imposed on the petitioners may be suspended.

7. The learned Additional Public Prosecutor *per contra* submitted that the prosecution has established that the petitioners had a common intention to cause the death of the deceased and the trial Court has rightly convicted them. Hence, he prayed for dismissal of the petition.

8. We find from the records that the *overt acts* attributed to the petitioners/A4 & A5 are that, by using wooden logs, they attacked the leg of the deceased. However, we find no corresponding injuries, as per the report of the postmortem doctor [PW11]. Hence, their false implication cannot be ruled out. Thus, they have a fair chance of success in the appeal. However, it is made clear that the above observations are only an expression of our *prima facie* view.



9. Considering the above and the fact that the petitioners are women and they are in custody since 16.08.2023 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/A4 & A5.

10. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioners/A4 & A5 is suspended on the following conditions:

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned II 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; 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 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.]



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ars

07.02.2024

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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

- 1.The II Additional District and Sessions Judge,
Salem.
- 2.The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
- 3.The Superintendent of Prisons,
Special Prison for Women, Salem
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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