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Crl.MP.No.18140 of 2023
in Crl.A.No.1029 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.18140 of 2023
in Crl.A.No.1029 of 2022

Tamilmani

...Petitioner/Appellant

Vs.

The State Represented by
The Inspector of Police,
Sivagiri Police Station,
Kodumudi, Erode District.
(Crime No.217/2018)

... Respondent

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence passed in S.C.No.36 of 2021 dated 05.08.2022 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.C. Ramkumar
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr. C. Aravind

ORDER



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(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A1, by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, in S.C.No.36 of 2021, by the judgment dated 05.08.2022 , and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, in S.C.No.36 of 2021, convicted the petitioner herein under Section 302 IPC and sentenced him to undergo Rigorous Imprisonment for life and a fine of Rs.1,00,000/-, in default, to undergo simple imprisonment for three months.

3.Challenging the above conviction and sentence, the petitioner/A1, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr. C. Ramkumar, learned Counsel appearing for the petitioner



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and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that A1 was married to the deceased 13 years prior to the occurrence; that due to matrimonial differences, the deceased was living in a portion at the 1st accused place in Kattur, as per the order of court, and as she got a job at TNEB, Palladam, she rented a house near her work place and used to go to Kattur on holidays; that A1 and A2 had homo-sexual relationship and that since the deceased was a hindrance to the said relationship, A1, A2 and A3 (mother of the A1) decided to do away with the deceased; that on 18.10.2018, when the deceased came near the house of the accused, all the accused attacked her with wooden logs and wooden portion of the spade, causing grievous injuries on the shoulder, eyes and other vital parts of the body; and that the deceased succumbed to injuries.

6. The learned counsel for the petitioner submitted that the prosecution case, which is based on circumstantial evidence, has not been proved by the prosecution. P.W.7 who had last seen the deceased along with all the accused is



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the only witness relied upon by the prosecution and the prosecution failed to prove the other circumstances against the accused. Learned counsel further submitted that since P.W.7's evidence insofar as the involvement of A2 and A3 was disbelieved by the trial court, the same reasoning would apply to the petitioner as well.

7. The learned Additional Public Prosecutor, per contra, submitted that P.W.7's evidence along with motive, which has been established by the prosecution proved the guilt of the petitioner and opposed the petition for Suspension of Sentence.

8. We have carefully considered the rival submissions and perused the records. P.W.1 speaks about the matrimonial difference between the petitioner and the deceased. However, that by itself in the facts of the case does not conclusively establish the motive. Apart from that evidence, the only other evidence is the evidence of P.W.7, who is said to have seen the deceased along with all the three accused at about 6.30 p.m. on the date of occurrence. A2 and A3 were acquitted by the trial court though P.W.7 speaks about their presence at 6.30



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p.m along with the deceased. In our view, what applies to A2 and A3 would also apply to the petitioner. Hence, we are of the view that the petitioner/appellant has a fair chance of success in the appeal. We hasten to add that this is an expression of our prima facie view.

9. Considering the above facts and since the petitioner is in incarceration from 05.08.2022 and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.
- (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;
- (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



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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.)
05.03.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 06.03.2024
Upload the order copy forthwith _

To

1. The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court), Erode.
2. The Inspector of Police,
Sivagiri Police Station,
Kodumudi, Erode District.
(Crime No.217/2018)
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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

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