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Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

Vasanth

...Petitioner/Appellant

Vs.

The State by
The Inspector of Police,
Suramangalam Police Station,
(Crime No.808/2018)

... Respondent

Prayer :- Criminal Miscellaneous Petition filed under Section 389 of Cr.P.C. to suspend the sentences passed in the Judgment dated 30.11.2022 in S.C.No.121/2019 on the file of the Principal District and Sessions Judge, Salem, and enlarge him on bail pending disposal of the above Crl.A. No.322 of 2023.

For Petitioner : Mr.M.G. Udayashankar
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind, C.



Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

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 Principal District and Sessions Judge, Salem, in S.C. No. 121 of 2019, by the judgment dated 30.11.2022, and to enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Principal District and Sessions Judge, Salem, in S.C.No.121 of 2019, convicted the petitioner herein and sentenced him as follows:

Offence	Sentence Imposed
302 r/w 34 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- , in default, to undergo six months Rigorous imprisonment.
302 r/w 201 IPC	To undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Rigorous imprisonment.

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



Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

present miscellaneous petition.

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4. Heard Mr.M.G. Udayashankar, learned Counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that P.W.1 and the deceased were brothers; that A1 was a distant relative of the deceased; that A1 and the deceased were in the habit of consuming liquor together and two months prior to the occurrence, the deceased had a quarrel with A1 and attacked him, as a result of which, A1 was enraged and wanted to do away with the deceased and in pursuance to the sequence, A1 requested his friends A2 and A3 and all the three accused took the deceased and caused his death.

6. Learned counsel for the petitioner submitted that the case is based on circumstantial evidence. The body of the deceased was found in a well and initially a case under the caption 'Man Missing' was registered by the police and subsequently, on an information given by P.W.4 and P.W.5 that they last saw the



Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

deceased with the accused, the case was altered to 302 IPC. The learned counsel for the petitioner further submitted that P.W.4 and P.W.5 turned hostile and admittedly the appellant/A1 had no motive against the deceased and the recovery also does not intimate the appellant in the alleged offence.

7. Learned Additional Public Prosecutor, per contra, submitted that the prosecution established all the circumstances and the trial court was right in convicting the appellant and therefore, prayed for dismissal of the present petition.

8. We carefully considered the rival submissions and perused the records. It is the case of the prosecution that only A1 had the motive who caused the death of the deceased. P.W.4 and P.W.5, who had allegedly seen the appellant along with the deceased, prior to the occurrence, turned hostile. Therefore, there are no circumstances connecting the appellant to the alleged offence. Therefore, the petitioner/appellant has a fair chance of succeeding in the appeal and since this appeal is not likely to be taken up for hearing in the near future and also considering the fact that the petitioner is in incarceration from 30.11.2022, we



Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

are inclined to suspend the sentence on the following conditions:

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- (i) The petitioner 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 Judicial Magistrate No.2, Salem.
- (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 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.)
16.02.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 16.02.2024
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Page 5 of 7



Crl.MP.No.18633 of 2023
in Crl.A.No.322 of 2023

WEB COPY

To

1. The Judicial Magistrate No.2, Salem.
2. The Inspector of Police,
Suramangalam Police Station,
(Crime No.808/2018)
- 3.The Superintendent of Prison,
Central Puzhal, Salem.
- 4.The Public Prosecutor,
High Court, Madras.



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Crl.MP.No.18633 of 2023
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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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Crl.MP.No.18633 of 2023
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