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CrLMP.No.1110 of 2024
in CrL.A.No.106 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrLMP.No.1110 of 2024

in

CrL.A.No.106 of 2024

E.Kamalraj

...Petitioner/Appellant/2nd Accused

Versus

Inspector of Police
Thiruchengodu Rural Police Station,
Erode District,
Crime No.165/2018

...Respondent/Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389 [1] of the CrL.P.C., to suspend the sentence imposed on the petitioner/2nd accused in S.C.No.38 of 2019 on 09.05.2022 on the file of the learned Sessions Judge, Special Court for SC & ST (POA) Act Cases, Namakkal, and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.C.D.Sugumar
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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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 petitioner/2nd accused by Judgment and order dated 09.05.2022 passed in S.C.No.38 of 2019 on the file of the learned Session Judge, Special Court for SC & ST (POA) Act cases, Namakkal and to enlarge the petitioner on bail pending disposal of the criminal appeal.

2. The petitioner/2nd accused, in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
302 of IPC	To undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo SI for six months.
120 B of IPC	To undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo SI for six months.
341 of IPC	To undergo SI for one month.
Sentences were ordered to run concurrently.	

3. Challenging the above conviction and sentence, the petitioner has



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filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present petition.

4. Heard Mr.C.D.Sugumar, the learned counsel for the petitioner/2nd accused and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that A1 and A2 were friends; that A1 was doing a business of money lending; that the deceased was also doing the business of money lending; that they were frequently quarrelling with each other; that A2 unexpectedly met A1 in a wine shop and while chatting with A1, he informed that the deceased did not help him, when he needed money; that therefore, A1 suggested to A2 that they should both kill the deceased for which A2 agreed; that on 28.03.2018 at about 10. a.m., while the deceased was going on his motor cycle, both the accused stopped him, kicked him and pushed him out of the Motor Cycle; and that they stabbed the deceased indiscriminately on the back, chest, stomach and chin by using knives.



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6 (i). The learned counsel for the petitioner/A2, submitted that the prosecution case rests on the evidence of eye witnesses, P.W.1 who is brother of the deceased and P.W.8 who is the friend of P.W.1; and that both these witnesses are interested witnesses and the version that P.W.1 borrowed the vehicle of his brother of the deceased is improbable.

(ii). The learned counsel further submitted that the version of P.W.1 and P.W.8 that they both took the deceased to the hospital is also false as the prosecution suppressed the accident register which would belie the version of P.W.1 and P.W.8; that further P.W.17 is the Photographer, who was called to take the picture of the deceased had stated that on 28.03.2018 morning, he had taken picture of the deceased at the place of occurrence, which is contrary to the evidence of P.W.1 and P.W.8; that he had a fair chance of success in the appeal; and that the petitioner is in custody from 09.05.2022.

7. The learned Additional Public Prosecutor, *per contra*, submitted



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that the evidence of P.W.1 is cogent and convincing; that there is no reason to falsely implicate the accused; and that the Photographer's evidence cannot be used to discredit the evidence of P.W.1 and P.W.2. Hence, he prayed for dismissal of the petition.

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

9. Admittedly, the petitioner is in custody since 09.05.2022. It is reported that A1 died during the trial. The evidence of P.W.1 and P.W.8, *prima facie* do not inspire confidence. Though they stated that they took the deceased to the hospital, we see that the prosecution had not marked the accident register to substantiate their version. That apart P.W.17, the Photographer would state that on 28.03.2018 morning, he was taken to the place of occurrence, where the deceased was lying dead. He has marked the pictures as Ex.P10. The presence of P.W.1 and P.W.8 in the place of occurrence therefore is highly doubtful. We are therefore of the view that the petitioner has a fair chance of success in the



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appeal. We hasten to add that it is an expression of our *prima facie* view

10. Considering the above, the fact that the petitioner is in custody from 09.05.2022 and the fact that 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 petitioner herein.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is suspended and the sentence imposed on the petitioner is suspended on the following conditions:

(i) The petitioner 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 Sessions Judge, Special Court for SC & ST (POA) Act Cases, Namakkal;

(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



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to ensure their identity; and

(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.]
05.07.2024

dk

Note: Issue order copy by .07.2024

Copy to:-

1.The Sessions Judge,
Special Court for SC & ST (POA) Act Cases,
Namakkal.



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2.The Inspector of Police
Thiruchengodu Rural Police Station,
Erode District..

3.The Superintendent of Prisons,
Central Prison Coimbatore.

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



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SUNDER MOHAN, J
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