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Crl.M.P.No.19457/2023 in Crl.A.No.1531/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

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

Crl.M.P.No.19457 of 2023
in Crl.A.No.1531 of 2023

R.Sivakumar @ Siva

... Petitioner

Vs.

State by the Inspector of Police,
Central Police Station,
Tiruppur Town,
Crime No.258 of 2015,
Tiruppur District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence of imprisonment imposed in the judgment dated 30.03.2022 made in S.C.No.110 of 2016 on the file of the learned II Additional District and Sessions Judge, Tiruppur and enlarge him on bail.

For Petitioner : Mr.A.Saravanan

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



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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 Judge, Tiruppur on 30.03.2022 in S.C.No.110 of 2016 and enlarge him on bail.

2. The learned II Additional District and Sessions Judge, Tiruppur, in S.C.No.110 of 2016, 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.5000 and in default to undergo six months simple 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.A.Saravanan, learned counsel appearing for the



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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 deceased Shankar had a previous dispute with Sivakumar (A.1), Gopalakrishnan (A.2) and one Palpandiyan. As a result of this previous enmity, on 12.05.2015 at 11.45 p.m., the accused persons are said to have waylaid the deceased Shankar and there was wordy quarrel and the accused persons attacked the deceased with their hands indiscriminately. As a result of this incident, the deceased Shankar was rushed to the Government Hospital, Tiruppur and from there, he was referred to the Government Hospital, Coimbatore. The deceased was declared dead on 13.05.2015 at about 21.15.hours.

6. When A2 had sought for suspension of sentence in Crl.M.P.No.19246 of 2022 in Crl.A.No.891 of 2022, this Court had passed the following order;

“7.The prosecution has based its case on circumstantial evidence. The learned counsel for the petitioner pointed out to the evidence of P.W.2, which was heavily relied upon to prove the last seen theory. The learned counsel drew our attention to a lot of discrepancies in the evidence of P.W.2,



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in the light of the evidence of P.W.7, who deposed that there was no electricity connection and that no light was available at the time of the incident.

8.The evidence of other witnesses viz., P.W.1, P.W.4 and P.W.11 were also brought to the notice of this Court and it was contended that there were a lot of gaps in the chain of circumstances and the prosecution was not able to prove beyond reasonable doubts every circumstance that was relied upon and hence, the benefit of doubt must be extended to the petitioner.

9.Considering the facts and circumstances of the case and also considering the fact that the petitioner has already suffered incarceration for a period of nearly nine months and that there are arguable points involved in the appeal and further, the petitioner has no bad antecedents, we are inclined to suspend the sentence imposed by the Court below in S.C.No.110 of 2016 dated 30.03.2022, subject to the following conditions;

- i. The petitioner shall deposit the fine amount of Rs.5,000/- before the trial Court, if not already deposited.*
- ii. 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 II Additional District and Sessions Judge, Tiruppur;*



- iii. *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 cards or Bank passbooks to ensure their identity; and*
- iv. *The petitioner shall appear before the respondent police every Monday at 10.30 a.m., for a period of eight weeks. After completion of the said period, the petitioner shall report before the learned II Additional District and Sessions Judge, Tiruppur, 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.”*

7. Even when the petition for suspension of sentence of A2 was heard, this Court had interviewed this petitioner through video-conference, as he did not file an appeal then and appraised him of his right to file an appeal. Thereafter, petitioner has filed the instant appeal.

8. We find that the evidence against A1 and A2 are one and the same and the observations made by this Court extracted above will apply to the



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petitioner as well. Hence, we are inclined to suspend the sentence imposed on the petitioner/accused by the learned II Additional District and Sessions Judge, Tiruppur on 30.03.2022 in S.C.No.110 of 2016 .

9. 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 No.2, Tiruppur;
- (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.



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(M.S.R, J.)

(S.M, J.)

26.04.2024

Index: Yes/No

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Note: Issue Order Copy on 29.04.2024



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

Tsg

To

- 1.The II Additional District and
Sessions Judge, Tiruppur.
- 2.The Judicial Magistrate Court No.2,
Tiruppur.
- 3.The Inspector of Police,
Central Police Station,
Tiruppur Town,
Crime No.258 of 2015,
Tiruppur District.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court,
Madras.

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