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CrLMP.No.18466/2023 in CrL.A.No.1322/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrLMP.No.18466/2023

in

CrL.A.No.1322/2023

1. S.Prakash @ Amalapaul
2. R.Ajith
3. M.Mohan
4. R.Sarathi .. Petitioners/accused 1 to 4

Versus

State rep.by
The Inspector of Police
K-10, Koyambedu Police Station,
Chennai.
(Cr.No.1120 of 2018) .. Respondent

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.109 of 2019 dated 07.09.2023 on the file of the learned I Additional Sessions Judge, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.V.K.Sathiamurthy
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

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 by judgment and order dated 07.09.2023 passed in SC No.109 of 2019 on the file of the learned I Additional Sessions Judge, Chennai, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who are arrayed as accused 1 to 4 in the above Sessions Case, were convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A1 to A4	148 of IPC	To undergo rigorous imprisonment for a period of two years along with fine of Rs.1,000/- in default to undergo simple imprisonment for six months.
	341 r/w 34 and 149 of IPC	To undergo simple imprisonment for one month along with fine of Rs.500/- in default to undergo simple imprisonment for one week.
	302 r/w 34 and 149	To undergo rigorous imprisonment for



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of IPC

life along with fine of Rs.10,000/- in default to undergo simple imprisonment for two years.

The sentences imposed are ordered to run concurrently.

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

5. The case of the prosecution is that on 25.10.2018 at about 7.30pm, due to prior enmity, the accused along with a child in conflict with law, armed with deadly weapons, waylaid the deceased near his house; and that they attacked the deceased with knife indiscriminately, as a result of which, the deceased died. Hence, a case was registered in Crime No.1120 of 2018, against the petitioners/accused 1 to 4, for the offences under Sections 294(b), 341 and 307 of the IPC.



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6. (i) The learned counsel for the petitioner submitted that the petitioners 2 to 4 were not named in the FIR; that in the entry made by PW14, the Doctor, who first examined the deceased, it is shown that PW1 told him four unknown persons attacked his son.

(ii) The learned counsel further submitted that in the complaint, PW1 had stated that A1 and one Murali and other unknown persons attacked the deceased. However, no Test Identification Parade was conducted to identify the petitioners/accused 2 to 4. Hence, the learned counsel prayed that the sentence imposed on the petitioners may be suspended.

7. The learned Additional Public Prosecutor *per contra* submitted that PW1 to PW4 have identified the petitioners/accused 1 to 4 in Court. The prosecution had proved its case and the trial Court rightly found the accused guilty of the offence under Section 302 of the IPC and therefore, the petitioners are not entitled to suspension of sentence.



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8. We have carefully considered the rival submissions and perused the evidence on record. In the complaint, PW1 had stated that A1 and one Murali attacked the deceased along with some unknown persons.

The number of unknown persons have not been mentioned in the complaint. There is no proper explanation as to why the said Murali has not been made an accused. Further, PW14, who made the entries in the Accident Register had stated that PW1, the father of the deceased had told him that the deceased was attacked by unknown persons. No Test Identification Parade has been conducted to identify the petitioners/accused 2 to 4. The petitioners/accused 2 to 4 were identified for the first time in Court, three years after the occurrence.

9. Considering the above facts, this Court is of the view that petitioners/accused 2 to 4 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. The appeal is not likely to be taken up in the near future and hence, this Court is inclined to suspend the sentence in so far as



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petitioners/accused 2 to 4 are concerned.

10. The learned counsel for the petitioners made an endorsement withdrawing this petition in respect of the 1st petitioner/A1. Accordingly, **this petition is dismissed as withdrawn in respect of the 1st petitioner/A1.**

11. In so far as petitioners/accused 2 to 4, this criminal miscellaneous petition stands **allowed** and the sentences imposed on the petitioners/accused 2 to 4, are suspended on the following conditions:

- (i) Each of the petitioners/accused 2 to 4 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 I Additional Sessions Judge, Chennai;
- (ii) The petitioners/accused 2 to 4 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



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numbers to ensure their identity; and

(iii)The petitioners/accused 2 to 4 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.

[MSRJ] [SMJ]
18.01.2024

ars
Speaking/Non-Speaking order
Neutral Citation: Yes/No

Issue order copy by 19.01.2024
Upload the order forthwith.

To

1.The I Additional Sessions Judge,
Chennai

2.The Inspector of Police,
K-10, Koyambedu Police Station,



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Chennai.

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3.The Superintendent of Prisons,
Central Prison No.1, Puzhal, Chennai.

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



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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