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Crl.M.P.No.19012 of 2023
in Crl.A.No.1447 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.No.19012 of 2023
in Crl.A.No.1447 of 2023

K. Kathiravan

... Petitioner

Vs.

The State of Tamil Nadu
represented by the Inspector of Police,
Arni Taluk Police Station.
Crime No.250/2020

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence of life imprisonment alone imposed on the petitioner/appellant/accused No.2 herein made in S.C.No.85 of 2021 on the file of Additional District and Sessions Judge, Fast Track Court, Arni, Tiruvannamalai District on 31.10.2023 and enlarge him on bail, pending disposal of the above Criminal Appeal on the file of this Court.

For Petitioner : Mr.A.V. Arun



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For Respondent : Mr.E. Raj Thilak,
Additional Public Prosecutor

ORDER

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

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence of life imprisonment imposed on the petitioner herein by the learned Additional District and Sessions Judge, Fast Track Court, Arni, Tiruvannamalai District on 31.10.2023 in S.C.No.85 of 2021 and enlarge him on bail, pending disposal of the Criminal Appeal.

2. The learned Additional District and Sessions Judge, Fast Track Court, Arni, Tiruvannamalai District, in S.C.No.85 of 2021, has convicted the petitioner/second accused and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A2	Section 302 IPC	Life imprisonment and to pay a fine of Rs.2,000/-, in default to pay the fine amount and undergo simple imprisonment for two years.



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

4. Heard Mr.A.V. Arun, learned counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. The case of the prosecution is, that the deceased and the daughter of the first accused were in a romantic relationship which was opposed by the first accused and therefore, there was an enmity between the deceased and the first accused; that when the deceased and P.W.2 went to attend the nature's call on 29.03.2020 around 07.30 am, the first accused along with the petitioner/second accused, followed the deceased and P.W.2 and caused the death of the deceased by striking him with a hammer. It is the further case of the prosecution that P.W.2 had informed P.W.1 about the said incident, who in turn lodged a complaint before the Police.



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6. The learned counsel for the petitioner submitted that there is no evidence as against the petitioner inasmuch as P.W.2, who is initially said to have witnessed the occurrence turned hostile. He further submitted that there is no motive alleged against the petitioner/second accused, who is the nephew of the first accused; and that the prosecution relies upon the extra-judicial confession, which is a weak piece of evidence and cannot be the sole basis for conviction.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent/Police submitted that the prosecution has established the case beyond reasonable doubt and the Trial Court had rightly convicted the petitioner for the offence alleged and the petitioner has not made out any case for suspension of sentence.

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

9. We find that P.W.2 who is said to have witnessed the occurrence turned hostile and did not support the prosecution's case. The



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prosecution's case is based on the extra-judicial confession said to have been given by the petitioner. There are no other circumstances to corroborate the extra-judicial confession said to have been given by the petitioner.

10. From the evidence on record, we are *prima facie* convinced that the petitioner has fair chances of succeeding in the appeal. Hence, we are inclined to suspend the sentence. In view of the nature of allegation, we are also of the view that interest of justice would be made if the petitioner is directed to stay at Chennai and report before the Inspector of Police, Royapettah Police Station.

11. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of life imprisonment 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 sureties each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Fast Track Court, Arni,



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Tiruvannamalai District;

- (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 is directed to stay at Chennai and report before the Inspector of Police, Royapettah Police Station, once a month, until further orders.

(M.S.R, J.)

(S.M, J.)

22.01.2024

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

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Note: Issue Order Copy on 23.01.2024



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To

- 1.The Inspector of Police,
Arni Taluk Police Station.
- 2.The Judicial Magistrate,
Arni, Tiruvannamalai District.
- 3.The Central Prison,
Vellore, Vellore District.
- 4.The Additional Public Prosecutor,
High Court,
Madras.



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

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