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CrL.MP.No.18956/2023 in CrL.A.No.1431/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrL.MP.No.18956/2023 in CrL.A.No.1431/2023

Ajithkumar

..

Petitioner / A1

Versus

State by
The Inspector of Police,
Arni Town Police Station,
Tiruvannamalai District.
[Cr.No.36/2020]

..

Respondent

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to
suspend the sentence imposed on the petitioner in S.C.No.34 of 2021 dated
29.09.2023 passed by the Additional District Sessions Judge, (FTC), Arni,
Tiruvannamalai District.



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For Petitioner : Ms.M.Rebecca

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

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 vide judgement and order dated 29.09.2023 passed in S.C.No.34 of 2021 on the file of the learned Additional District Sessions Judge, (FTC), Arni, Tiruvannamalai District, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that petitioner and A2 were in love with each other; that earlier, A2 and the deceased had a romantic relationship and aggrieved by the fact that A2 developed intimacy with the petitioner, the deceased had threatened A2 and the petitioner of dire consequences and therefore, A2, along with the petitioner decided to do



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away with the deceased; and that on 17.01.2020, A2 called the deceased and along with the petitioner, attacked the deceased with knives and wooden log and caused his death.

3. Heard the learned counsel for the petitioner [A1] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.Learned counsel for the petitioner [A1] submitted that the prosecution has not established any of the circumstances against the petitioner and the alleged extra judicial confession given by the petitioner to the P.W.10, Village Administrative Officer was not recorded in writing by the VAO.

5.Learned Additional Public Prosecutor, per contra, submitted that the circumstances have been fully established and the extra judicial confession given by the petitioner has been corroborated by the other circumstances proved by the prosecution and therefore, the petitioner is not entitled to



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suspension of sentence.

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

7.It is the case of the prosecution that the petitioner/A1 had relationship with A2 and initially A2 had relationship with the deceased and the deceased was aggrieved by the said act and was harassing A2. A1 and A2, therefore, decided to kill the deceased.

8.We find from the record that apart from the alleged extra judicial confession given by the petitioner to the P.W.10, VAO, there is no other evidence to connect the petitioner with the alleged offence. The said confession is not recorded in writing. That apart, there is nothing on record to indicate as to why the petitioner reposed confidence in P.W.10 who was a stranger to him. Further, the extra judicial confession which is a weak piece of evidence is uncorroborated. We had granted suspension of sentence to A2 in CrI.M.P.No.19974 of 2023, by the order dated 20.02.2024. It is seen that



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the petitioner herein who is arrayed as A1 is also similarly placed and has 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.

9. Considering the above facts, we are of the view that the petitioner / A1 is in custody from 21.01.2020, and 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.

10. 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 Additional District Sessions Judge, (FTC) Arni, Tiruvannamalai District;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court



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may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers 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.]
23.02.2024

Anu

Issue order copy by 23.02.2024

Upload the order copy forthwith.

Internet: Yes

To

1.The Additional District Sessions Judge, (FTC),
Arni, Tiruvannamalai District

2.The Inspector of Police,
Arni Town Police Station,
Tiruvannamalai District.



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3.The Superintendent of Prison,
Central Prison, Vellore.

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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