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Crl.M.P. No.19510 of 2023 in Crl.A. No.211 of 2021

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

[Order of the Court was made by M.S.RAMESH, J.]

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.164 of 2010, dated 11.03.2021, on the file of the IV Additional District and Sessions Judge, Bhavani, Erode, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. It is the fourth petition filed by the petitioner/appellant seeking for suspension of sentence imposed on him by the learned IV Additional District and Sessions Judge, Bhavani, Erode, in S.C.No.164 of 2010, dated 11.03.2021.

3. The first bail petition in Crl.M.P. No.5483 of 2021 in Cr.A.No.211 of 2021, came to be rejected by the Coordinate Bench of this Court on 27.08.2021, by observing as follows:

"11. In this case, the extrajudicial confession of the petitioner (A2) to Muthusamy (PW8), VAO, clearly sets out the



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game plan of the accused and also the manner, in which, Shanmugam was murdered. This is not a case of mistaken identity, rather a case, in which, Revathi (A3), who wanted to conceal her affair with Senthil Kumar, owner of Deepa Medical Shop, had told that Shanmugam, owner of Kamatchi Medical Shop, was courting her. Therefore, Prabhu (A1) and the petitioner (A2) targeted Shanmugam, who was the owner of Kamatchi Medical Shop and committed the dastardly act of throwing acid on him and murdering him.

12. Whether the extrajudicial confession should be accepted or not is an aspect, which can be seen only during the final hearing of the case and not in this bail petition. Similarly, the discrepancies and the contradictions in the evidences of various witnesses that were pointed out by the learned counsel for the petitioner cannot be considered in this petition.

*13. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**¹, has considered **Kashmira Singh v. State of Punjab**² (1 (2008) 5 SCC 230, 2 1977 SCC (Cri) 559 and has held as follows:*



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Crl.M.P. No.19510 of 2023 in Crl.A. No.211 of 2021

“30.In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.”

In view of the above reasoning, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A2) and accordingly, this criminal miscellaneous



Crl.M.P. No.19510 of 2023 in Crl.A. No.211 of 2021

petition stands dismissed at this juncture."

WEB COPY

The second bail petition in Crl.M.P.No.11105 of 2021 in Crl.A.No.211 of 2021 was also dismissed on 24.11.2021 on the same ground as aforestated. The third bail petition was filed in Crl.M.P. No.2378 of 2022 in Crl.A. No.211 of 2021 and the same came to be dismissed on 23.03.2022 by observing that when the Coordinate Bench was about to dismiss the petition on merits, the counsel for the petitioner sought permission to withdraw the same.

4. We are of the view that, when the Coordinate Bench rejected the bail petitions on three occasions and the latest being in the month of March 2022, the present petition does not deserve consideration. Accordingly, the Criminal Miscellaneous Petition stands dismissed.

5. Registry is directed to prepare typed set of papers and post the Criminal Appeal for final disposal during first week of April 2024.

(M.S.R., J.) (S.M., J.)
04.03.2024

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Dated: 04.03.2024