



Crl.MP.No.19301 of 2023
in Crl.A.No.435 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.Nos.19301 of 2023 & 3498 of 2024
in Crl.A.No.435 of 2021

Crl.M.P.Nos.19301 of 2023

Raghu @ Raghuvaran

...Petitioner/Accused No.6

Crl.M.P.No.3948 of 2024

1. Manickam
2. Sathi @ Sathiyaraj
3. Pitchan @ Pitchai

...Petitioners/Accused 1 to 3

Vs.

1. State represented by the
The Assistant Commissioner of Police,
South Region,
Tiruppur District.
2. Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
(Cr. No.551 of 2016)

... Respondents in both Crl.M.Ps.



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Common Prayer :- Criminal Miscellaneous Petitions filed under Section 389(1) of Cr.P.C. to suspend the sentence of imprisonment imposed on the petitioners/appellants herein by the Principal Sessions Court, Tiruppur in Spl. S.C. No.35 of 2016 dated 16.07.2021 and release the petitioners herein on bail pending disposal of the above appeal.

Crl.M.P.Nos.19301 of 2023

For Petitioner : Mr. C. Iyyappa Raj
Crl.M.P.No.3948 of 2024

For Petitioners : Mr. P. Govindarajan

For Respondent
(in both Crl.M.Ps) : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr. C. Aravind

COMMON ORDER

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

This Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed on the petitioners, by the learned Principal Session Judge, Tiruppur, in Spl.S.C.No.35 of 2016, by the judgment dated 16.07.2021, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned learned Principal Sessions Judge, Tiruppur, in Spl.S.C.No.35 of 2016, convicted and sentenced the petitioners herein as



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follows:

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<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Manickam (A1)	148 IPC	To undergo one year rigorous imprisonment, each
Sathi @ Sathiyaraj (A2)	449 IPC	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, each.
Pitchan @ Pitchai (A3)		
Raghu @ Raghuvaran ((A6)	302 IPC	To undergo Life imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, each.
The aforesaid sentences were ordered to run concurrently.		

3.Challenging the above conviction and sentence, the petitioners/appellants have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petitions.



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4. Heard Mr.C. Iyyappa Raj, learned Counsel appearing for the petitioner in Crl.M.P. No.19301 of 2023, Mr.P. Govindarajan, learned Counsel appearing for the petitioners in Crl.M.P. No.3948 of 2024 and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that A1 is the husband of one Kavitha; that the said Kavitha had illicit intimacy with the deceased and on account of that, there were frequent quarrels between A1 and the deceased; that there were cases and counter cases against each other; that aggrieved by the said illicit relationship, A1 went to the house of the deceased on 29.06.2016 at about 6.30 p.m. along with the other accused and in the presence of P.W.1 and P.W.2 attacked the deceased with weapons indiscriminately and the deceased succumbed to injuries.

6. Learned counsels for the petitioners submitted that the complaint was lodged belatedly after deliberation and both P.W.1 and P.W.2, cannot be believed; that the presence of police in the scene of occurrence, even before lodging of the complaint was admitted by P.W.1; that P.W.1 had stated that Investigating Officer



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seized the weapons on the date of occurrence, when the prosecution case is that the accused were arrested the next day shows that the prosecution case is improbable. Hence, they prayed for suspension of sentence imposed on the petitioners.

7. Learned Additional Public Prosecutor, per contra, submitted that P.W.1 and P.W.2 are reliable and natural witnesses and they were residing along with the deceased in the house and hence the trial court had rightly convicted the appellant on the basis of the evidence and hence prayed for dismissal of the petition.

8. We have carefully considered the rival submissions and perused the records. It is seen from the evidence of P.W.1 that she had admitted the presence of police in the scene of occurrence even before she had lodged the complaint and considering the allegations in the FIR, the possibility of deliberation and tutoring cannot be ruled out. Further the accused were arrested on the next day. However, P.W.1 would state that the police had seized all the weapons and she had seen the weapons at the police station on the day of occurrence. Hence the recovery is



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also doubtful. That apart only four persons were named in the FIR and there was no Test Identification parade conducted for the other two unknown persons. In such circumstances, we are of the view that the petitioners/appellants have a fair chance of success in the appeal. We hasten to add that this is an expression of our prima facie view.

9. Considering the above facts, the period of incarceration of the petitioners and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Tiruppur.
- (ii) The petitioners 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 petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of



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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.

(M.S.R., J.) (S.M., J.)
22.03.2024

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Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 26.03.2024
Upload the order copy forthwith _

To

1. The Principal Sessions Judge, Tiruppur.
2. The Assistant Commissioner of Police,
South Region,
Tiruppur District.
3. Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
4. The Superintendent,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.



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

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