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Crl.MP.No.20300 of 2023
in Crl.A.No.1670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.20300 of 2023
in Crl.A.No.1670 of 2023

Nanjegowda

...Petitioner/Accused No.7

Vs.

State of Tamil Nadu
Represented by the Inspector of Police
Karumalaikoodal Police Station
Mettur, Salem District
Crime No.217 of 2016

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence of imprisonment imposed on the petitioner/appellant by the judgment dated 07.10.2023 made in S.C. No.60 of 2018 passed by the learned Sessions Judge, Mahila Court, Salem and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Ms.P.V.Rajeswari
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr. C. Aravind



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ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner, by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.60 of 2018, by the judgment dated 07.10.2023, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned learned Sessions Judge, Mahila Court, Salem, in S.C.No.60 of 2018, convicted and sentenced the petitioner herein as follows:

<i>Offence</i>	<i>Sentence imposed</i>
120 (B) IPC	To undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three months Simple imprisonment.
342 IPC	To undergo six months Simple Imprisonment.
396 IPC	To undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months Simple imprisonment.
302 IPC	To undergo Rigorous Imprisonment for life and to pay a fine of Rs.5,000/- in default, to undergo six months Simple imprisonment.
450 IPC	To undergo ten years Rigorous Imprisonment



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<i>Offence</i>	<i>Sentence imposed</i>
	and to pay a fine of Rs.5,000/- in default, to undergo six months Simple imprisonment.

3.Challenging the above conviction and sentence, the petitioner/A7, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Ms.P.V. Rajeswari, learned Counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the deceased was a retired Government Officer and he had an Iridium Petromax Light in his house and several brokers approached him to buy it; that the deceased refused to sell the light; that the accused entered into a conspiracy and decided to take away the light and pursuant to the said conspiracy, on 15.08.2016, A1 along with the other accused trespassed into the house of the deceased and committed dacoity and murder; and that the petitioner (A7) made the defacto complainant/P.W.1 to



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sit on a sofa in the front room and the other accused caused the death of the deceased and took away the gold jewels and also the Iridium Petromax Light.

6. The learned counsel for the petitioner submitted that the prosecution case rests on the evidence of P.W.1, whose version in the complaint is different from her deposition in the Court. Earlier she had stated in her complaint that four persons were involved in the occurrence and in her deposition before the Court she had stated that about six persons were involved, and she had not identified the petitioner in Court and hence prayed for suspension of sentence imposed on the petitioner.

7. The learned Additional Public Prosecutor, per contra, submitted that, during investigation, the petitioner's involvement was found out and the evidence adduced by the prosecution has been rightly appreciated and the petitioner was convicted by the trial court and hence prayed for dismissal of the petition.

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



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records. We find that P.W.1 in Ex.P1 complaint has stated that four persons were involved in the occurrence. However, in the deposition, she would state that six persons were involved. Identification parade was conducted. P.W.1 had not identified the petitioner/A7 in the Court. That apart, there is no recovery from the petitioner. In such circumstances, we are of the view that the petitioner/appellant has 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 and since the petitioner is in incarceration from 07.10.2023 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 petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Mettur, Salem.
- (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;



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(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.)
07.03.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 08.03.2024
Upload the order copy forthwith _



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To

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1. The Sessions Judge,
Magalir Neethi Mandram (Mahila Court),
Salem.
2. The Judicial Magistrate No.II, Mettur, Salem.
3. The Inspector of Police,
Karumalaikoodal Police Station,
Mettur, Salem District,
Crime No.217 of 2016
- 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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