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Crl.M.P.No.1573/2024 in Crl.A.No.1319/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.1573 of 2024
in Crl.A.No.1319 of 2023

1.Mani
2.Thangaraj
3.Ramachandran
4.Ramamoorthy
5.Sriramulu

... Petitioners

Vs.

State rep. by,
Inspector of Police,
Gummidipoondi Police Station,
Thiruvallur District,
Crime No.439 of 2012.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence passed in S.C.No.132 of 2014 dated 12.10.2023 on the file of the learned IV-Additional District Sessions Judge, Thiruvallur at Ponneri, pending disposal of the above Criminal Appeal and the petitioners enlarge on bail.

For Petitioner : Mr.N.Arun Kumar



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

ORDER

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

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners/accused by the learned IV Additional District Sessions Judge, Thiruvallur at Ponneri on 12.10.2023 in S.C.No.132 of 2014 and enlarge them on bail.

2. The learned IV Additional District Sessions Judge, Thiruvallur at Ponneri, in S.C.No.132 of 2014, has convicted the petitioners/accused and sentenced them as follows:-

	<i>Offence</i>	<i>Sentence imposed</i>
<i>A2</i>	Sections 302, 148 & 149 IPC	(i) Sentenced to undergo one-year Simple Imprisonment for offence U/s.148 of IPC and (ii) Sentenced to undergo Life Imprisonment and to pay a fine amount of Rs.1000/- and in default sentenced to undergo 3 months Simple Imprisonment for Offence U/s.302 r/w 149 of IPC.



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A3	Sections 302, 148 & 149 IPC	(i) Sentenced to undergo one-year Simple Imprisonment for offence U/s.148 of IPC and (ii) Sentenced to undergo Life Imprisonment and to pay a fine amount of Rs.1000/- in default sentenced to undergo 3 months Simple Imprisonment for offence U/s.302 r/w 149 of IPC.
A4	Sections 302, 149 & 147 IPC	(i) Sentenced to undergo 6 months Simple Imprisonment for offence U/s.147 of IPC and (ii) Sentenced to undergo Life Imprisonment and to pay a fine amount a sum of Rs.1000/- in default sentenced to undergo 3 months Simple Imprisonment for offence U/s.302 r/w 149 of IPC
A5	Sections 302, 149 and 147 IPC	(i) Sentenced to undergo 6 months Simple Imprisonment for offence U/s.147 of IPC and (ii) Sentenced to undergo Life Imprisonment and to pay a fine amount a sum of Rs.1000/- in default sentenced to undergo 3 months Simple Imprisonment for offence U/s. 302 r/w 149 of IPC.
A7	Sections 302, 149 and 148 IPC	(i) Sentenced to undergo one-year Simple Imprisonment for offence U/s.148 of IPC and (ii) Sentenced to undergo Life Imprisonment and to pay a fine amount a sum of Rs.1000/- in default sentenced to undergo 3 months Simple Imprisonment for offence U/s.302 r/w 149 of IPC.

3. Challenging the above conviction and sentence, the



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petitioners/accused, have filed the Criminal Appeal and seek suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.N.Arun Kumar, learned counsel appearing for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. It is the case of the prosecution that on 31.08.2012 at about 9.30 p.m., PW1 and PW2 heard the cry of the deceased from the palm grove and when they entered the palm grove, it was dark and they saw the deceased lying in a pool of blood and also saw A6 and A7 running from the scene of occurrence. PW1 and PW2 took the deceased to Vcare Hospital at Annanagar at 11.45 p.m. and the deceased succumbed to the injuries on 08.09.2012.

6. The learned counsel for the petitioner submitted that out of the 7 accused, two of them died during the trial; that though PW1 and PW2 claim to be eye-witnesses to the occurrence, the doctor had stated that the deceased was brought to the hospital by one Govindarajalu, who was not examined by the prosecution; that the complaint was registered only on



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02.09.2012 and the material alterations in the printed FIR and that PW12, the Investigating Officer has admitted that there are no eye-witnesses to the occurrence.

7.The learned Additional Public Prosecutor per contra, submitted that the trial Court has considered all the evidence on record and rightly convicted the petitioners and that, they have not made out a ground for suspension of sentence.

8.On perusal of records, we find that PW12, the Investigating Officer had admitted that his investigation revealed that there were no eye-witnesses to the occurrence and that the complaint was registered two days after the occurrence, though it is claimed by the prosecution that the victim was immediately taken to the hospital for treatment. Further, the evidence also reveals that the deceased was originally taken to the Gummudipoondi Government Hospital. However, the Accident Register maintained by those Hospitals is not produced by the Prosecution.

9.In the light of PW12's admission and considering the fact that there is delay in registration of the FIR, the evidence of PW1 and PW2 is



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doubtful. The petitioners have a fair chance of success in the appeal and hence, we are inclined to suspend the sentence imposed on the petitioners/accused by the learned IV Additional District Sessions Judge, Thiruvallur at Ponneri on 12.10.2023 in S.C.No.132 of 2014

10. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioners/accused is suspended on the following conditions:-

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties each, each for a like sum to the satisfaction of the learned IV-Additional District Sessions Judge, Thiruvallur at Ponneri;
- (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 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



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the trial Court on any other day in lieu of the date of his
absence, as directed by the trial Court.

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(M.S.R, J.)

(S.M, J.)

26.04.2024

Index: Yes/No

Tsg

Note: Issue Order Copy on 29.04.2024



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

Tsg

To

- 1.The IV-Additional District Sessions Judge,
Tiruvallur at Ponneri.
- 2.Inspector of Police,
Gummidipoondi Police Station,
Thiruvallur District,
Crime No.439 of 2012.
- 3.The Superintendent,
Central Prison,
Puzhal.
- 4.The Public Prosecutor,
High Court,
Madras.

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