



CRL MP(MD) No.677 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty Second day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN
and
The Hon`ble Ms.Justice R. POORNIMA

CRL MP(MD) Nos.677, 1237 and 2865 of 2024
and
CRL A(MD) Nos.4 and 56 of 2023

1 SEENI @ SEENIVASAN
2 BALAYOGESH

... Petitioners / Appellants
in CRL MP(MD) No.677 of 2024

1 VIJAYAKUMAR
2 GOPI

... Petitioners / Petitioners
in CRL MP(MD) No.1237 of 2024

MUTHURAJA

... Petitioner / Petitioner / Accused No.7
in CRL MP(MD) No.2865 of 2024

Vs

THE INSPECTOR OF POLICE
KENIKKARAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
(IN CRIME NO.318/2015.)

... Respondent / Complainant
in all petitions

Prayer in CRL MP(MD). 677/ 2024 :

To suspend the sentence imposed on the petitioners/appellants passed in SC No.120/2018, on the file of the Learned Principal Sessions Judge, Ramanathapuram



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dt.8/12/2022 and enlarge the petitioners on bail pending disposal of the instant Criminal appeal.

Prayer in CRL A(MD)No.56 of 2023:

To call for record in S.C.No.120 of 2018 on the file of the learned Principal Sessions Judge, Ramanathapuram and set aside the sentence and conviction awarded to A1 to A5 by the order dated 08.12.2022.

Prayer in CRL MP(MD). 1237/ 2024 :

To suspend the sentence imposed by the learned Principal Session Judge, Ramanathapuram in SC No.120/2018 dt.08.12.2022 and enlarged petitioner on bail pending disposal of the above Criminal appeal.

Prayer in CRL MP(MD). 2865/ 2024 :

To suspend the sentence imposed by the learned Principal Sessions Judge, Ramanathapuram in S.C No. 120 of 2018 dt. 08.12.2022 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

Prayer in CRL A(MD) No.4 of 2023:

To call for the records and set aside the order of conviction and sentence passed in S.C.No.120 of 2018 of 2022 on the file of the Principal Sessions Judge, Ramanathapuram and allow this appeal and acquit the appellants/ Accused.

Order : These criminal miscellaneous petitions coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.N.ANANDA PADMANABHAN, Senior Counsel for M/S APN LAW ASSOCIATES, Advocate for the petitioners in CRL MP(MD) No.677 of 2024 and Mr.P.ANDIRAJ, Advocate for the petitioners in CRL MP(MD) No.1237 of 2024 and Mr.C.ARUL VADIVEL @ SEKAR, Senior Counsel for M/s.A.ARUMUGAM, Advocate for the petitioner in CRL MP(MD) No.2865 of 2024 and of Mr.T.SENTHIL KUMAR, Additional Public Prosecutor on behalf of the Respondent in all petitions, the Court made the following order:-

The Criminal Miscellaneous Petition in Crl.M.P.(MD)No.667 of 2024 has been filed in Crl.A.(MD)No.56 of 2023 by A4 and A5, who have been convicted along



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with A6, A7 and A8 for the offence punishable under Sections 120B IPC in S.C.No.120 of 2018 on the file of the Principal Sessions Court, Ramanathapuram, by judgment dated 08.12.2022, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, each, in default two years simple imprisonment.

2. It is also to be mentioned that A6 and A8 in the same Sessions Case ie., in S.C.No.120 of 2018 have filed Crl.M.P.(MD)No.1237 of 2024 and A7 has filed Crl.M.P.(MD)No.2865 of 2024. Both the criminal appeals in Crl.A.(MD)No.4 of 2023 and Crl.A.(MD)No.56 of 2023 have been filed questioning the judgment, whereby the petitioners herein have been convicted for the offence punishable under Section 120B IPC. It is also to be mentioned that A1 and A2 also stood trial in the same sessions case in S.C.No.120 of 2018 and they have been convicted for the offence punishable under Section 302 IPC and that A3 also stood trial and he had been granted suspension of sentence earlier by this Court, taking into consideration his age and subsequently, we are informed that he has unfortunately died.

3. The case of the prosecution is that there was earlier a civil dispute relating to property between A1 on the one hand and one of his relatives. The deceased had supported the relative to the adverse interest of A1. This had created a sense of hostility in the mind of A1 as against the deceased. Keeping that as a motive, he had taken the assistance of other accused, particularly A3 to A8 and it is also stated that



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they had entered into a conspiracy to commit the murder of the deceased Tamilarasan. PW1 in this case is the wife of the deceased Tamilarasan. She had been informed about the murder by her nephew, PW2.

4. It is the further case of the prosecution that A1 and A2 had actually committed the murder and A3 to A8 were at close range from that particular place. The investigation was set in motion on receipt of the complaint lodged by PW1, who stated that she knew A1 to A8 and that her husband had retired from service and they were all staying together. It had also been stated that on the date of the accident, namely, 12.07.2015, when information had been given to A1 and A2 that deceased has come away from house, A1 and A2, came in a two wheeler bearing reg.no.TN 65 AA 2711 and A4 came in another two wheeler bearing reg.no.TN 65 AA 4584 and A5 to A8 came in a red colour Bolero car. They had intercepted the deceased and A1 and A2 indiscriminately cut the deceased causing fatal injuries. This information had been given to PW1 by PW2. Immediately thereafter, PW1 had rushed to the place of occurrence and she saw the dead body of her husband. She also found other people standing there and thus, she had lodged the complaint.

5. The wordings in the said complaint have been pointed out by the learned senior counsel appearing on behalf of the petitioner and the first limb of arguments was based on that particular fact. In the complaint / Ex.P1, PW1 had stated that she



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suspected the involvement of Gopal (A3), Vijayakumar (A6), Gopi (A8), Srinivasan presumably Seeni (A4) and Govindaraj, who is not arrayed as an accused. It is pointed out that she had mentioned those names in the complaint and thereafter, stated that “she suspected them” “சந்தேகப்படுகிறேன்” for being responsible for the commission of the offence, which led to the unfortunate death of her husband.

6. The learned senior counsel pointed out the words used by her in the complaint and stated that she had only suspected. He further stated that it was the burden of the prosecution to establish the case beyond reasonable doubt.

7. To establish the case, the prosecution had examined PW6, who was an employee of a tea stall, who in his evidence stated that a red colour bolero car had come over to the shop. A1 had come in that car. There were two other persons, one was short and dark and the other was of slight complexion. The two persons were not identified in the Court. This aspect was pointed out by the learned Senior Counsel appearing for the petitioners stating that the prosecution, by examining PW6 had not made any headway into establishing the case against the accused herein.

8. Thereafter, the prosecution had also examined PW7, who was similarly an employee of the tea shop and who also stated that near his tea shop about five years before the date on which he tendered evidence, a red colour bolero car had driven



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by A1, Madhavan had come. There were two other persons and he stated that he

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did not know whether the other two persons were arrayed as accused in the Court.

Pointing out the evidence of both the aforementioned witnesses, PW6 and PW7, the learned senior counsel appearing for the petitioners stated that their evidence is not helpful to the prosecution in determining the identity of the accused herein.

9. Thereafter, the prosecution had the further burden to establish the conspiracy. In this case, the prosecution had relied on the evidence of PW9, who is the sister of the deceased and PW10. It is pointed out by the learned senior counsel appearing for the petitioners that the statement of P.W9 and PW10 under Section 161 Cr.P.C. was recorded by the investigating officer only on 28.09.2015, whereas the incident is said to have been occurred about three months prior to that date. It is also pointed out that both the witnesses, P.W9 and PW10 have not spoken about the facts, which they had come to know directly prior to be examined by the Investigating Officer.

10. PW9, in her evidence, had stated that when she went to the place where the cow shed is since her granddaughter had gone there, she saw the accused conversing among themselves and she also stated that she distinctly heard that they stated that the deceased Tamilarasan should be done away, since he was an obstruction for the civil property dispute, which was pending and A1 was a focal



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person on such dispute. Similarly PW10, in his statement and also in his evidence, stated that when he was at a Tasmac shop, he saw four of the persons, discussing in a low voice among themselves stating that the deceased Tamilarasan should be done away with.

11. Both the statements of PW9 and PW10 under Section 161 Cr.P.C., were recorded on 28.09.2015. It is further pointed out by the learned senior counsel appearing on behalf of the petitioners that the said statements had reached the Court only on 06.09.2016, nearly a year later. It is therefore contended that not much reliance could be placed on the evidence of PW9 and PW10.

12. It is argued that on the basis of such evidence that these petitioners who had been convicted for the offence punishable under Section 120B IPC. It is therefore urged that the evidence being weak, the Court should consider granting of suspension of sentence.

13. As a matter of fact, it is contended that A4 and A5 had filed an earlier application seeking suspension of sentence and A6, A7 and A8 had filed two earlier applications seeking suspension of sentence. On one occasion, the Court had considered the same on merits and had dismissed the applications. On the other occasion, the learned counsels had taken a decision to withdraw the applications.



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14. The learned Additional Public Prosecutor has placed reliance on the order by the Coordinate Division Bench of this Court, while dismissing the petition seeking suspension of sentence in Crl.M.P.(MD)No.1606 of 2023 and Crl.M.P.(MD) No.745 of 2023, which had been filed by A3, A6, A7 and A8. As aforesaid earlier, A3 had been granted suspension of sentence. But the applications filed on behalf of A6, A7 and A8 had been dismissed.

15. The learned Additional Public Prosecutor pointed out that the ground now taken, namely that the statements of PW9 and PW10 had been recorded belated by the Investigating Officer, had been urged even earlier and the Division Bench had refused to consider the particular ground.

16. However, the learned senior counsel appearing for the petitioners reiterated that particular contention and stated that though it had been pointed out earlier that there had been a delay in recording the statements by the Investigating Officer, the fact that the statements had reached the Court belatedly had not been pointed out.

17. A reading of the order of the Division Bench on the earlier occasion shows that it had been submitted before the Division Bench that PW9 and PW10 were examined belatedly and that their statements had also reached the Court belatedly. Therefore, both these points had been argued in the earlier occasion and both the



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points had been considered by the Division Bench. The Division Bench had observed as follows:-

“9. The Submissions of the learned counsel that the belated examination and the reaching of the statement to the Court belatedly.....”

18. It is thus seen that there had been a submission that the statements had been recorded belatedly and that it had reached the Court belatedly. The Division Bench had not noted the dates. Still as fact, it had considered as particular submission.

19. The Division Bench had referred to a judgment of the Hon'ble Supreme Court relied on behalf of the petitioners in that occasion, namely Harbeer Singh vs Sheeshpal & Ors reported in 2016 (16) SCC 418 and had drawn inspiration from a passage of that particular judgment, wherein the Hon'ble Supreme Court had held that the delay in recording of statement of witnesses would not indicate that the testimony should be discredited. It had been observed that the testimony could be relied if cogent and credible and the delay is explained to the satisfaction of the Court.

20. The Division Bench had also examined the evidence of PW9 and PW10 and had also stated that there is no reason to disbelieve the evidence of PW9 and



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PW10, owing to explanation furnished by the prosecution for the delay in recording the statements as well as in reaching of the statements to the Court. Thus, the submission now before this Court had actually been raised earlier and had suffered an order of rejection.

21. The learned Senior Counsel stated that there is no bar in exercising judicial discretion and examining a second application seeking bail. In this connection, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Babu Singh and Others vs. State of U.P. reported in 1978 (1) SCC 579, wherein in paragraph No.2, the Hon'ble Supreme Court had stated that an order refusing the application of bail does not necessarily preclude another application on a later occasion, giving more materials and further developments and different considerations.

22. One aspect which has to be pointed out is that those more materials, further developments and different considerations should not have been to the knowledge at the time when the earlier bail application was either applied or moved or argued.

23. The facts in this case is about the belated examination by the Investigating Officer of recording statements of PW9 and PW10. This as a fact known earlier had been submitted before the Division Bench. The second aspect is that the statements



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so recorded had reached the Court belatedly. This as a fact was also known to the counsels, who had argued earlier and had been pointed out to the Division Bench earlier and had been considered by the Division Bench earlier and rejected by the Division Bench.

24. The only aspect is that we have recorded the dates on which the statements were recorded and the dates on which the statements had reached the Court. That data alone had not been mentioned in the earlier order. But the same facts have been urged.

25. In the very same judgment reported in 1978 (1) SCC 529 referred to supra, reliance was placed by the Hon'ble Supreme Court to an earlier judgment of the Hon'ble Supreme Court in the case of Kashmira Singh v. The State of Punjab reported in 1977 (4) SCC 291, wherein it is stated as follows:-

“The appellant, contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under section 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no



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practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying, postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified ? Would it be just at all for the Courts to tell a person : "We have admitted your



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appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent ?" What confidence would such administration of justice, inspire in the mind of the public ? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it ? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to



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the accused to appeal against his conviction and sentence."

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The Hon'ble Supreme Court had stated that it would not be rational to consistently follow the practice of rejecting the request for suspension of sentence and stated that the criminal appeal could be heard, particularly when there is no possibility of the criminal appeal ever being heard for about 5 or 6 years. It had been observed by the Hon'ble Supreme Court that it would be travesty of justice if the person is to be kept in jail for a period of 5 or 6 years for the offence, for which there is a good possibility that he could be found not guilty of the offence charged.

26. To balance this observation and the necessity to take a decision regarding suspension of sentence, the counter filed on behalf of the respondents will have to be examined.

27. In para 11 of the counter affidavit, the Inspector of Police, Kenikkarai Police Station, Ramanathapuram, had stated as follows:-

"11. It is respectfully submitted further that the dispute is long-standing and related to land, creating enmity between the parties. In this case, A2 and A4 involved in this case as a mercenary, they happened to be a friend of A5. There is significance chance of retaliation if the petitioners are granted bail.

It should be noted that in this case A3 who died pending appeal,



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there police forces were deployed to prevent any untoward incidents. Hence, the Respondent Police strongly believe that the likelihood of retaliation remains high.”

28. It had been very specifically stated that A2 and A4 had been involved as mercenaries and they were friends of A1, who had been wrongly given as A5 in the counter affidavit. It had also been stated that there is significant chance of retaliation, if the petitioners are granted bail. It has also been noted that though A3 had been granted bail owing to his age, he had died subsequently pending the appeal. Police force had to be deployed to prevent any untoward incident. It had therefore been stated that the respondent strongly believes that there is likelihood of retaliation. This is a submission made before this Court and it cannot be rejected as a statement made for the purpose of opposing grant of suspension of sentence.

29. The learned Senior Counsel appearing for the petitioners have not addressed this particular fact during the course of arguments. The argument is only focused on the fact that the statements of PW9 and PW10 was recorded belatedly and had also reached the Court belatedly and also the fact that PW1 in her complaint stated that she only suspected the persons whom she had named in the complaint as having been responsible for the death of her husband and also the weak nature of evidence of PW6 and PW7.



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30. It must be pointed out that the prosecution placed reliance on the evidence PW9 and PW10. The fact that the statements had been recorded belatedly and had reached the Court belatedly was also to the knowledge of the trial Court, since the records were available with the trial Court. Reliance had been placed on the said evidence and conviction had been passed for the offence punishable under Section 120B IPC.

31. In the counter affidavit filed on behalf of the respondents, reliance had also been placed on the judgment of the Hon'ble Supreme Court in the case of Omprakash Sahini vs. Jai Shankar Chaudhary and Another reported in 2023 (6) SCC 123, wherein it had been stated that the appellate Court should not re-appreciate the evidence at the stage of examining the suspension of sentence and try to pick up a few lacunae or loopholes in the case of the prosecution.

32. The learned senior counsel appearing for the petitioners argued that this Bench should consider the delay in recording the statements of PW9 and PW10 by the Investigating Officer and the delay in forwarding the said statements to the Court. Unfortunately, the very same point had been urged earlier and had been rejected earlier.

33. We are constrained to record that we cannot sit in review against the opinion given by the earlier Division Bench. We cannot also determine whether a



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particular reasoning of the earlier Division Bench is right or wrong. If we are to disagree with that particular opinion, there must be additional material. No such records have been made available. The same records as were available before the Division Bench are available now before us. No additional information had been given. The dates alone have been furnished. There is no reason to hold that they would not have been given before the Division Bench. The word 'belated' had been used again and again in the order of the Division Bench.

34. It is pointed out by the learned Senior Counsel appearing for the petitioners that one of the focal point of the arguments was that statements of PW9 and PW10 had been recorded by the Investigating Officer after recording the statement of PW17 and that an alternation report had been filed and only thereafter the statements had been recorded from PW9 and PW10.

35. Even after a final report is filed under Section 173 (8) of Cr.P.C., the prosecution has every right to undertake further investigation as directed by this Court. Before filing of the final report, on the basis of the materials, the Investigating Officer also has a duty, since he is investigating the offence committed against the State, to gather all information relating to the offence which had been committed, including recording statements of witnesses. The statements of PW9 and PW10 had not been recorded belatedly, but rather immediately after information had been



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received by the investigating officer of their knowledge of certain facts.

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36. We therefore hold that even though a particular point may not have been raised earlier before the Division Bench, still it is a point available on record. It is not a point which had emanated only for the first time when these applications had been filed. They were part of the records even when they were furnished to the accused under Section 207 Cr.P.C., and when the charges were framed, during the time of recording of the evidence and at the time of arguments. They are old materials pointed out for the first time. There is no reason given as to why these points were not argued on the earlier occasion. There cannot be piecemeal arguments advanced, once before a particular Division Bench, which rejects the same, and then holding back another point and arguing the same before another Division Bench. That procedure cannot be countenanced by this Court. These criminal miscellaneous petitions are dismissed.

sd/-
22/10/2024

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/11/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To

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1.The Principal Sessions Judge,
Ramanathapuram.

2.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL MP(MD) Nos.677, 1237 and 2865 of 2024
and

CRL A(MD) Nos.4 and 56 of 2023

Date :22/10/2024

ED/ MMS /SAR- (04/11/2024) 19P / 5C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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