



CRL MP(MD) No.6973 of 2024

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

Wednesday, the Thirty First day of July Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA
and
The Hon`ble Mr.Justice K. RAJASEKAR

CRL MP(MD) No.6973 of 2024
IN
CRL A(MD) No.963 of 2023

PRABHUDEVA

... PETITIONER/ APPELLANT/ ACCUSED No.6

Vs

THE INSPECTOR OF POLICE
SILAIMAN POLICE STATION,
MADURAI DISTRICT.

CR.NO.63/2015

... RESPONDENT/RESPONDENT/COMPLAINANT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed on the petitioner by the judgment dt 11.09.2023 made in SC No.567/2016 by the Honourable VI Additional District Sessions Judge Madurai and enlarge the petitioner on bail pending disposal of the present appeal in Crl A(MD)No.963 of 2023 in the interest of justice.

PRAYER in CRL A(MD) No.963 of 2023:

To call for the records and set aside the judgment dated 11.09.2023 made in S.C.No.567 of 2016 by the Hon'ble VI Additional District Sessions Judge, Madurai in the interest of justice.



CRL MP(MD) No.6973 of 2024

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.MUTHU SARAVANAN.C, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The present petition has been filed by the appellant/6th accused to suspend the sentence imposed on him by the learned VIth Additional Sessions Judge, Madurai in S.C.No.567 of 2016.

2. The petitioner stands convicted and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
302 I.P.C.	To undergo life imprisonment	Rs.5,000/- in default to undergo one year simple imprisonment
The sentences shall run concurrently		

3. The case of the prosecution is that P.W.1 Thiru.Veeramani is son of the deceased Karupasamy. A11 Muniyasamy was the former Karcherry Village Panchayat President. During the election in the year 2011, A11 was defeated and the father of P.W.1 Karuppasamy was elected as Karcherry Panchayat President and hence, there was motive between the deceased Karuppasamy and A1 Muniyasamy. At this



CRL MP(MD) No.6973 of 2024

WEB COPY

juncture, A1 Tamilselvam constructed the house encroaching the road. Hence, the people of the Village has given a complaint to the Panchayat President Thiru.Karupasamy. In the mean time A1 Tamilselvam filed the writ petition before this Court and the same was dismissed. Hence, the revenue officials have taken action thereby removed the encroachment area by demolishing the building constructed in the road on 26.02.2015. In view that motive, on 27.02.2015 all the accused 1 to 12 unlawfully assembled with deadly weapons near the Murugan Temple and attacked the deceased. Hence, P.W.1, P.W.2, P.W.3 and other witnesses Ayyammal, Janarthanan rushed to the spot, at that time A1 Tamilselvam threatened the witnesses with dire consequences. P.W.4 Thiru.Thandeeshwaran, who is also the another son of the deceased, called the Apollo Hospital Ambulance and immediately the injured was taken to Apollo Hospital, Madurai where he was under treatment. At that time as per the requisition of the duty medical officer, P.W.18 Tmt.Mareeswari, Judicial Magistrate went to the Apollo Hospital by 20.00 hours, where Dying Declaration was recorded in the presence of Dr.Mannan Rajan. The Dying Declaration is marked as Ex.P29. P.W.1 lodged the complaint at 23.30 hours which is marked as Ex.P1. Further, on the next day on 28.02.2015 at early morning 5.35 hours the injured Karupasamy died.

4. Learned counsel appearing for the petitioner would submit that the petitioner is a



CRL MP(MD) No.6973 of 2024

WEB COPY

son of A1 and during the relevant point of time, he was undergoing under graduate at Thiagarajar College at Madurai and that he has been falsely implicated in this case based on enmity. Apart from the petitioner, the entire family members have also been implicated in this case. He would further submit that the Dying Declaration is said to have been recorded by the Magistrate from the deceased and in that the deceased other than stating that the sons of Tamilselvan along with other accused and the sons of Pandi have assaulted him, the name of the petitioner has not been specifically spoken by the deceased. Further, in the Dying Declaration, the deceased had stated that no one else was available in the scene of occurrence and the persons, who were with him, were attending to some work inside the house and thereby ruling out the presence of P.W.1 and P.W.4, who are stated to be eye witnesses.

5. He further submitted that the alleged occurrence is said to have been taken place on 27.07.2015 at about 04.30 p.m., and even as per the prosecution, the deceased was said to have been taken to Apollo Hospital, Madurai on the same day at 05.00 p.m., and the treatment has been started at 05.30 pm., whereas the complaint has been given to the respondent police only at 11.30 p.m., creating a grave doubt in the case of the prosecution and it is also shows the possibility of false implication of persons after deliberation. Further, the trial Court taking into consideration the



CRL MP(MD) No.6973 of 2024

WEB COPY

falsity and exaggeration, had acquitted the accused Nos.2,4 & 12. The petitioner has no previous case and this Court earlier by order dated 12.01.2024 in CrI.M.P(MD) No.16791 of 2023 has granted suspension of sentence for the 11th accused, by order dated 22.05.2024 has granted suspension of sentence for the accused Nos.7,8,9 & 10 in CrI.M.P(MD)Nos.16193 of 2023 and 423 of 2024 and by order dated 05.07.2024 in CrI.M.P(MD)No.16833 of 2023 has granted suspension of sentence to the third accused hence, he seeks for indulgence of this court and prayed for granting suspension of sentence.

6. The respondent filed counter affidavit. The learned Additional Public Prosecutor appearing for the respondent would submit that it is a case where the deceased, Panchayat President, who has taken action against the encroachment was done to death by the accused. Immediately, after the occurrence, the deceased was taken to Apollo Hospital, Madurai and he has given a Dying Declaration and the same was recorded by the Magistrate. He further submitted that the deceased though not specifically named the petitioner, has stated that sons of Tamilselvan and Pandi are also among the accused, who have assaulted him and he would object for grant of suspension of sentence.

7. Heard the learned counsel on either side and perused the materials available on record.



CRL MP(MD) No.6973 of 2024

8. In this case, in the dying declaration recorded by P.W.18/learned Judicial Magistrate No.VI, Madurai the deceased had not specifically pointed out the name of the accused and during the relevant point of time, the petitioner was studying and he was on bail during trial. The material contradictions in the evidence of the eye witnesses also creates doubt. Having regard to the fact that there are arguable points involved in the appeal and further, the appeal is not likely to be taken up for final hearing in the near future and also considering the period of incarceration and also taking into consideration the facts and circumstances of the case, we are inclined to suspend the sentence imposed on the petitioner by the Trial Court pending the Appeal.

9. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner herein alone is suspended pending the Appeal, subject to the following conditions:

- i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) with two sureties within a period of 10 days from the date of receipt of a copy of this order, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Madurai.
- ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or



CRL MP(MD) No.6973 of 2024

Bank passbook to ensure their identity; and

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iii. The petitioner shall appear before the trial Court once in a month i.e., on the first working day of every English Calendar month at 10.30 a.m., until further orders.

sd/-
31/07/2024

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01/08/2024
Sub-Assistant Registrar()
Madurai Bench of Madras High Court,
Madurai - 625 023.

AM

TO

- 1 THE VI ADDITIONAL DISTRICT
SESSIONS JUDGE, MADURAI.
- 2 THE JUDICIAL MAGISTRATE NO.II,
MADURAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
- 4 THE INSPECTOR OF POLICE
SILAIMAN POLICE STATION, MADURAI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



CRL MP(MD) No.6973 of 2024

+1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-9216[I] dated 01/08/2024)

ORDER
IN
CRL MP(MD) No.6973 of 2024
IN
CRL A(MD) No.963 of 2023
Date :31/07/2024

SS/SAR- /01/08/2024/8P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023