



Crl.M.P.(MD).Nos.10015 and 10835 of 2023

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

Tuesday, the Fourth day of June Two Thousand and Twenty Four

PRESENT

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

Crl.M.P.(MD).Nos.10015 and 10835 of 2023
in
Crl.A.(MD).Nos. 250 and 244 of 2022

ARCHUNAN

...APPELLANT/ ACCUSED NO.4
IN CRL MP(MD)No.10015 of 2023

DINESH @ DINESH KUMAR

...APPELLANT/ ACCUSED NO.3
IN CRLMP(MD)No.10835 of 2023

Vs

THE INSPECTOR OF POLICE
KENIKARAI TALUK POLICE STATION,
RAMANATHAPURAM DISTRICT
(CRIME NO. 175 OF 2013)

... RESPONDENT/COMPLAINANT
IN BOTH CASES

Prayer in CRL MP(MD)No.10015 of 2023

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 sentenced imposed against me in S.C.No.127/2016 dt 20.10.2021 on the file of the Honourable Additional District and Sessions Judge Ramanathapuram and release appellant on bail till the disposal of the appeal.



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PRAYER IN CRL A(MD).250/2022:

Pleased to call for the entire records connected to the judgment in S.C.No.127 of 2016 on the file of the Hon`ble Additional District and Sessions Judge, Ramanathapuram dated 20.11.2021 and set aside the conviction and sentence imposed against the appellant.

Prayer in CRL MP(MD). 10835/ 2023 :

To suspend the sentence imposed against the petitioner in S.C.No.127 of 2016 dated 20.10.2021 on the file of the Honble Additional District and Sessions Judge, Ramanathapuram and release the petitioner on bail till the disposal of the appeal..

PRAYER in CRL A(MD) No.244/2022:

Pleased to call for the entire records connected to the judgment in S.C.NO.127 of 2016 on the file of the Hon'ble Additional District and Sessions Judge, Ramanathapuram dated 20.11.2020 and set aside the conviction and sentence imposed against the appellant.

Order : These Criminal Miscellaneous petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.LAJAPATHY ROY, Senior Counsel for MR.R.ALAGUMANI, Advocate for the petitioner in both cases and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent in both cases, the court made the following order:-

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

The present petitions have been filed by A3 and A4 seeking for suspension of sentence imposed on the petitioners, by judgment dated 20.10.2021 passed in S.C.No.127 of 2016 on the file of the learned Additional District and Sessions Judge, Ramanathapuram and enlarge the petitioners on bail pending disposal of the above appeals.

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2. The petitioners/ A3 and A4 were convicted by the Trial Court for the offences under Sections 302 r/w 109 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- each, in default to undergo six months simple imprisonment.

3. The case of the prosecution is that on 28.04.2013, the deceased Muthusamy received a phone call from one Jeyakrishnan and he was informed that one Ravi had handed over the money and asked the deceased to come near the barber shop. When the deceased went along with P.W.12 in a two-wheeler, A2 is said to have sprinkled chilli powder on the face of the deceased and thereafter, the deceased was attacked indiscriminately by the accused persons. There are totally five accused persons in this case. The case was split up and A1 was convicted and sentenced in S.C.No.25 of 2020. A2 to A5 underwent a separate trial and A5 was acquitted. A2 was convicted for the offence under Section 302 IPC.

4. Mr.R.Alagumani, learned counsel appearing for the petitioners would submit that the entire case of the prosecution hinges upon the evidence of P.W.12, who is stated to be the eye witness in this case. P.W.12 is none other than the nephew of the deceased and he is said to have accompanied the deceased in a two wheeler and

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according to him, the entire incident is said to have happened in his presence. As per the evidence of P.W.12, he is said to have immediately informed about the incident to P.W.3, who is his father and P.W.4, who is his grandfather and father of the deceased. As per the evidence of P.W.3 and P.W.4, P.W.12 other than naming A1, Boss @ Baskaran and A2 Jeyakrishnan, he has not given the name and description of the other accused. Further, before the Trial Court, he had given an exaggerated version as if he knows the names of all the accused, whereas, in the complaint, Ex.P12, he has not given the names of the other accused except A1 - Boss @ Baskaran and A2 - Jeyakrishnan. Further, he had also deposed that the accused had thrown chilly powder on the face of the deceased, whereas, the evidence of the forensic expert does not point out that there was chilli powder present in the scene of occurrence. The learned counsel would further submit that this Court taking into consideration that the evidence of P.W.12 was exaggerated, had granted bail to the named accused A2, Jeyakrishnan in the case. Hence, he prayed for suspension of sentence for the petitioners/A3 and A4.

5. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent opposed the petitions stating that it is a case where the petitioners along with the other accused have indiscriminately assaulted the deceased



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with knife and aruval and had committed the murder after sprinkling the chilli powder on the face of the deceased. Hence, he prayed for dismissal of the petitions.

6. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor and also perused the materials available on record.

7. On perusal of the evidence of P.W.12, who is stated to be the only eye witness, it is seen that though P.W.12 had elaborately deposed about having known the names of the accused at the time of deposition, P.W.12, other than naming A1 and A2, had not given the names and description of the other accused in the complaint. It is also the case of the prosecution that immediately after the occurrence, P.W.12 had informed about the incident to P.W.3 and P.W.4. It is the evidence of P.W.4 stating that P.W.12 knew about A1 and he has not mentioned the names of the other accused. P.W.4 had also deposed that P.W.12 had specifically told that he does not know the names of the other accused. It is also brought to the notice of this Court that though Ex.P12 complaint was given by P.W.3 only at 8.00 PM, there was presence of Police in the scene of crime even before that. Therefore, the very genesis of the case of the prosecution and the identity of the accused are also in question.



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8. Taking into consideration the facts and circumstances of the case and also the fact that a prima facie case has been made out insofar as the petitioners are concerned and that the appeals are also not likely to be taken up for hearing in the near future, this Court is inclined to grant suspension of sentence to the petitioners/ A3 and A4.

9. Accordingly, the Criminal Miscellaneous Petitions are allowed and the substantive sentence of imprisonment alone imposed on the petitioners/ A3 and A4 is suspended, subject to the following conditions:-

i. The petitioners/ A3 and A4 shall pay the fine amount as imposed by the Court below, if not paid.

ii. The petitioners/ A3 and A4 are directed to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) each with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Trial Judge.

iii. 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 passbook to ensure their identity.

iv. The petitioners/ A3 and A4 shall appear before the respondent Police every monday at 10.30 AM, for a period of eight weeks. After completion of the period



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reporting before the respondent Police, the petitioners shall report before the Additional District and Sessions Judge, Ramanathapuram, on the first working day of every month at 10.30 AM until the disposal of the appeals 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 his absence, as directed by the Trial Court.

sd/-
04/06/2024

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07/06/2024
Sub-Assistant Registrar (CS -I/ II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANATHAPURAM,
2. THE INSPECTOR OF POLICE
KENIKARAI TALUK POLICE STATION,
RAMANATHAPURAM DISTRICT
3. THE SUPERINTENDENT,
MADURAI CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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1.THE JUDICIAL MAGISTRATE,
RAMANATHAPURAM.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM.

+2 CC to M/s.DR.R.ALAGUMANI, Advocate (SR-6163, 6164[I] dated 06/06/2024)

ORDER

IN

CrI.M.P.(MD).Nos.10015 and 10835 of 2023

in

CrI.A.(MD).Nos. 250 and 244 of 2022

Date :04/06/2024

RK (07/06/2024) 8P / 9C

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