



Crl.M.P.(MD) No.10498 of 2023

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

Thursday, the Eighteenth 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.M.P.(MD) No.10498 of 2023
in
Crl.A.(MD) No.585 of 2023

1.KATHIRESAN	...PETITIONER/ APPELLANT/ ACCUSED NUMBER 1
2 RAJESH	...PETITIONER/ APPELLANT/ ACCUSED NUMBER 2
3 KUMAR	...PETITIONER/ APPELLANT/ ACCUSED NUMBER 3

Vs

THE INSPECTOR OF POLICE
KULITHALAI POLICE STATION,
KARUR DISTRICT.

CRIME NO.328 OF 2020. ... 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 by the Learned Principal Sessions Judge,Karur in SC.No.25 of 2021 dt.2.6.2023 and enlarge the Petitioner on bail.



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WIPRIN PRAYER IN Crl.A.(MD) No.585 of 2023:

To call for the records and set aside the conviction passed by the Learned Principal Sessions Judge, Karur in SC No.25 of 2021 dated 02.06.2023 and acquit the Appellant of the charge.

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.SOMASUNDARAM.E, Advocate for the petitioners 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 appellants/accused Nos.1,2 & 3 to suspend the sentence imposed on them by the learned Principal Sessions Judge, Karur in S.C.No.25 of 2021, dated 02.06.2023.

2. The petitioners stand convicted and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
302 of IPC	To undergo life imprisonment	Rs.10,000/- each in default to undergo one year simple imprisonment.
The sentences shall run concurrently		



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3. The case of the prosecution is that the deceased and the deceased's father (P.W.1 and defacto complainant) are into milk business. Twenty days prior to the occurrence, the deceased engaged in a tussle with A1's father (Panaiyadiaan) and had beaten him badly. Hence, a motive arose between A1 and the deceased. On 21.04.2020 the deceased had left his house morning at 03.00 a.m., for the purpose of milking the cows and at 04.30 a.m., P.W.1 started searching for the deceased in and around Sukkampatti to Sottal Road. While so, the deceased was spotted near Ganesan's (P.W.7) house in his motorcycle riding towards northern direction. At the same time, it is alleged that accused number 1 to 3 and one Duraisamy, S/o.Vinoth had attacked the deceased.

4. Learned counsel appearing for the petitioners would submit that as per the prosecution, the alleged occurrence has taken place at 04.00 a.m., in the morning when the deceased was said to have been proceeded for milking the cows. The contradictions in the evidence of P.W.1 and P.W.18 would make their presence in the scene of occurrence highly doubtful. P.W.1 in his deposition before the Court has not specifically spoken about the presence of A1. Further, though P.W.1 has claimed that P.W.8 and PW.9, who are relatives, had come to the place of occurrence after the occurrence, P.W.9 has not supported the case of the prosecution. Further, P.W.1



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claimed that the complaint was written by one Sangeeth, whereas, the said Sangeeth has not been examined by the prosecution, which creates a doubt in the case of the prosecution. The presence of the eye witnesses are doubtful. Though the complaint has been preferred at 06.00 a.m., in the morning, it has reached to the Court at 5.50 p.m. The delay in reaching the FIR before the Court has not been properly explained. The trial Court without taking into consideration the said facts erred in convicting the accused. He would also submit that the petitioners are in custody from the date of judgment hence he seeks for indulgence of this court.

5. The respondents filed counter.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that due to previous enmity with regard to the assault of A1's father by the deceased, the accused have joined together and had committed the murder of the deceased by indiscriminately cutting with aruval. He would further submit that P.W.1, P.W.8 and P.W.9 are the eye witnesses to the occurrence and their evidence are cogent. Further, the delay has also been properly explained and thereby, he would vehemently oppose for grant of bail to the petitioners.



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

8. It is seen that the presence of the eye witnesses are doubtful and that the delay in reaching the FIR before the Court has not been properly explained. 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 petitioners by the Trial Court pending the Appeal.

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

- i. The petitioners 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 Sessions Court, Karur.
- ii. The sureties shall affix their photographs and Left Thumb Impression



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in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioners shall report before the Sessions Court, Karur on the first working day of every month at 10.30 am., until further orders.

iv. It is made clear that the petitioner shall not enter into the jurisdictional limits of the respondent Police Station until further orders.

sd/-
18/07/2024

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18/07/2024
Sub-Assistant Registrar (CS -II)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AM

TO

1. THE SESSIONS JUDGE, KARUR

2. THE INSPECTOR OF POLICE
KULITHALAI POLICE STATION,
KARUR DISTRICT.

3. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.SIVASUBRAMANIAN, Advocate (SR-8092[I] dated 18/07/2024)
<https://www.mhc.tn.gov.in/judis>



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ORDER
IN
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in
Crl.A.(MD) No.585 of 2023
Date :18/07/2024

RK (18/07/2024) 7P / 6C

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