



Crl.M.P.(MD) No.11066 of 2023

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

Friday, the Twenty Eighth 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) No.11066 of 2023  
in  
Crl.A.(MD) No.634 of 2023

1 VIJAYAN @ VIJAYAPANDI

2 MANI

... PETITIONERS NO.1 & 2/ APPELLANTS NO.1 & 2/  
ACCUSED NO.1 & 2  
Vs

THE INSPECTOR OF POLICE  
CHINNAMANUR POLICE STATION,  
THENI DISTRICT.

CRIME NO.496 OF 2014. ... 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 passed by the judgment dt.14.7.2023 made in SC.No.8 of 2016 on the file of Additional District and Sessions Court(FTC),Theni and enlarge the Petitioners/ Appellants on bail pending disposal of the above appeal.

Prayer in Crl.A.(MD) No.634 of 2023:

To call for the records relating to the Judgment dated 14.07.2023 made in S.C.No.08 of 2016 on the file of Additional District and Sessions Court(FTC), Theni and set aside the conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the accused.



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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 MR.R.GANDHI, Senior Counsel for M/S.GANDHI ASSOCIATES, for the petitioners and of MR.A.THIRUVADI KUMAR, 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 case of the prosecution is as follows:

(i) the deceased Pandi had an affair with Packiyam/A3. A1, A2 and A4 are son-in-law, son and daughter of A3. They advised A3 to break the relationship with deceased Pandi and as such, A3 warned the deceased Pandi to not to visit her house hereinafter. But the deceased Pandi refused to hear her words. It is further alleged that on 16.09.2014 deceased Pandi in an inebriated mood visited the house of Packiyam/A3. The deceased abused A3 and her daughter A4 in filthy language and assaulted them. It is further alleged that the accused persons conspired together to cause death to the Pandi. In furtherances of some, on 17.09.2014 at about 08.15 a.m., when the deceased Pandi was sitting near a well, the A2 said to have caught hold of the deceased Pandi's hands and A3 and A4 abused him with



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filthy language and A4 instigated A1 and A2 to kill the deceased Pandi.

At the time, A1 stabbed the deceased Pandi with knife at his left side of stomach and rib and pushed the deceased Pandi into the well. Due to the same, the deceased Pandi died on the spot. Hence, after due investigation, the Inspector of Police laid the final report against the accused for the offence under Sections 120(b) r/w 302 and 302 r/w 34 IPC.

(ii) Thereafter, P.W.15 took up the investigation and examined the witnesses and handed over the file to P.W.23, who had filed the final report in P.R.C.No.04 of 2015, before the learned Judicial Magistrate, Uthamapalayam, under Sections 302 r/w 34 IPC, against the accused.

(iii) On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session, Theni, in S.C.No.08 of 2016 and was made over to the Additional District Court (FTC), Theni, for trial.

(iv) The Trial Court, after hearing the accused, framed charges against them, as detailed below:



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| Charge | Penal Provisions                                                         |
|--------|--------------------------------------------------------------------------|
| 1.     | 120(B) r/w 302, 302 r/w 34 IPC against the first accused                 |
| 2.     | 120(B) r/w 302, 302 r/w 34 IPC against the second accused                |
| 3.     | 120(B) r/w 302, 302 r/w 34 and 294(B) IPC against the third accused      |
| 4.     | 120(B) r/w 302, 302 r/w 34 IPC and 294(B) IPC against the fourth accused |

(v) When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 23 witnesses and marked 12 exhibits and 9 material objects and Ex.C1 to Ex.C3 Court documents were marked. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused and two documents were marked Ex.D1 and Ex.D2.

(vi) By judgment and order dated 14.07.2023, the Trial Court found the accused

Nos.1 & 2 not guilty for the offence under Section 120(B) IPC and acquitted the



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accused Nos.1 & 2 under Section 120(B) and 302 of IPC and also found the accused Nos.3 & 4 not guilty for the offences under Section 120(B) r/w 302, 302 r/w 34 and 294 (B) of IPC and acquitted the accused Nos.3 & 4 for the above said offence and found the accused Nos.1 & 2 guilty for the offence under Section 302 r/w 34 IPC and convicted and sentenced them as detailed below:-

| Section of Law                      | Sentence of imprisonment      | Fine amount                                                     |
|-------------------------------------|-------------------------------|-----------------------------------------------------------------|
| Accused Nos.1 & 2 302 r/w 34 I.P.C. | To undergo life imprisonment. | Rs.5,000/- in default to undergo one month simple imprisonment. |

The sentences imposed on the accused were ordered to run concurrently.

2. Challenging the said conviction and sentence, the accused Nos.1 & 2 have filed an appeal in Crl.A.(MD) No.634 of 2023 and pending the appeal, they have filed the above miscellaneous petition seeking to suspend the sentence imposed on them.

3. Mr.R.Gandhi, learned Senior Counsel appearing for the petitioners would submit that the trial Court had failed to take into consideration the contradictions and the inconsistencies in the evidence of the prosecution witness P.W.1 to P.W.4, who



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are close relatives of the deceased. The inconsistencies create grave doubt with regard to their presence at the scene of occurrence at the time of occurrence. Admittedly, P.W.1 has deposed that when she along with P.W.4 and P.W.5 have gone to the place of occurrence, she had seen her father lying dead. P.W.2 has admitted that he has gone to the place of occurrence after the occurrence. The evidence of P.W.4 and P.W.5 categorically rules out the presence of P.W.2 in the scene of occurrence. Further, the trial Court has failed to taking into consideration the exaggeration in the evidence of P.W.1. He would further submit that the medical evidence is also not conclusive with regard to the cause of death. Further, there are several arguable points in favour of the petitioners, the likelihood of the appeal being taken up for final hearing in the near future is also not possible and therefore, he prayed for suspension of sentence.

4. The respondent filed a detailed counter.

5. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, would submit that the deceased had illicit relationship with one Packiyam (A3), who is the mother-in-law of the first petitioner and mother of the second petitioner. The family members of the petitioner advised the deceased not to come with their house, despite



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that the deceased has gone to the house of the accused and also abused the women folk and thereby enraged by the same, the petitioners along with accused Nos.3 & 4 have committed the murder. He would further submit that the witnesses have categorically spoken about the occurrence and the trial court had rightly found the accused guilty for the offences and he would oppose for grant of suspension of sentence.

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

7. We are of the opinion that the petitioners have made out the case for grant of suspension of sentence. Hence, we are inclined to grant bail to the petitioner.

8. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioners herein is suspended, 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



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sum to the satisfaction of the learned Judicial Magistrate,  
Uthamapalayam.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the satisfaction Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioners shall report before the Judicial Magistrate, Uthamapalayam on the first working day of every english calender month at 10.30 a.m. until further orders.

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

sd/-  
28/06/2024

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02 /07/2024  
Sub-Assistant Registrar (W )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

am

TO

1.THE JUDICIAL MAGISTRATE, UTHAMAPALAYAM.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
THENI.



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3. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE(FTC), THENI

4. THE SUPERINTENDENT  
CENTRAL PRISON, MADURAI.

5. THE INSPECTOR OF POLICE  
CHINNAMANUR POLICE STATION, THENI DISTRICT.

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

+2 CC to M/s.M/S.GANDHI ASSOCIATES, Advocate ( SR-7107[I] dated 28/06/2024  
)

ORDER  
IN  
Crl.M.P.(MD) No.11066 of 2023  
in  
Crl.A.(MD) No.634 of 2023  
Date :28/06/2024

RK (02/07/2024) 9P / 9C

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