



CRL MP(MD) No.2730 of 2024

WEB COPY

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

Monday, the Ninth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)No.2730 of 2024 in Crl.A(MD)No.148 of 2023
and
Crl.MP(MD)No.2778 of 2024 in Crl.A(MD)No.134 of 2023

KALIRAJAN @ KALI

... PETITIONER/ APPELLANT
IN CRL MP(MD).2730/ 2024

SUBRAMANIAN

... APPELLANT/ ACCUSED NO.1
IN CRL MP(MD).2778/ 2024

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
SATHANKULAM,
THOOTHUKUDI DISTRICT.

2 THE INSPECTOR OF POLICE
SATHANKULAM POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.204 OF 2014

... RESPONDENT/RESPONDENT
IN CRL MP(MD).2730/ 2024

THE DEPUTY SUPERINTENDENT OF POLICE,
O/O.DEPUTY SUPERINTENDENT OF POLICE,
SATHANKULAM POLICE STATION,
THOOTHUKUDI DISTRICT.
(CRIME NO.204/2014)

... RESPONDENT/COMPLAINANT
IN CRL MP(MD).2778/ 2024



CRL MP(MD) No.2730 of 2024

Prayer in CRL MP(MD).2730/2024 :

To Suspend the Sentence imposed upon the Petitioner/Appellant namely, Kalirajan @ Kali by the Learned Special Court for Trial of Cases under SC/ST(POA) Act, Thoothukudi(FAC) in SC.No.25 of 2020 dt.25.01.2023 and enlarge the Petitioner on bail, pending disposal of the above said Criminal Appeal.

Prayer in CRL A(MD).148/2023 :

To call for the records and set aside the conviction and sentence passed by the Sessions Judge, Special Court for Trial of Cases under SC/ST (POA) Act, Thoothukudi (FAC) in S.C.No.25 of 2020 dated 25.01.2023.

Prayer in CRL MP(MD). 2778/ 2024 :

To Suspend the Sentence of Imprisonment imposed by the Learned Special Court for SC/ST (POA) Act, Thoothukudi in SC.No.25 of 2020 by the Judgment dt.25.1.2023 and enlarge the Petitioner/Appellant on bail, pending disposal of the above said Criminal Appeal.

Prayer in CRL A(MD).134/2023 :

To call for the records pertaining to the judgment in S.C.No.25 of 2020 the file of the Learned Special Court for SC/ST (Prevention of Atrocities Act), Thoothukudi vide Judgment dated 25.01.2023 and set aside the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.K.SUYAMBULINGA BHARATHI, Advocate for MR.M.MURUGESAN, Advocate for the petitioner in CRL MP(MD).2730/2024 and MR.S.MAHENDRAPATHY, Advocate for the petitioner in CRL MP(MD).2778/2024 and of MR.M.SAKTHI KUMAR, Government Advocate (Crl.Side) on behalf of the Respondents in both CRL MP's, the court made the following order:-

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed by the Sessions Judge, Special Court for SC/ST (POA) Act, Thoothukudi (FAC) in SC No.25 of 2020 by the judgment dated 25/01/2023 and enlarge them on bail pending disposal of the above said Criminal Appeals.



CRL MP(MD) No.2730 of 2024

WEB COPY

2.The case of the prosecution is that the de-facto complainant, who belongs to Scheduled Caste Hindu Parayar Community was undertaking Sathankulam Union Contract work, that he owned two tipper lorries and used for providing jalli manal for the said contract, that the de-facto complainant's son PW2 was helping the de-facto complainant in his business and also acted as a driver of the tipper lorry, that few days before the date of incident, while PW2 was driving tipper lorry near Amuthukunnakudi, he had overtaken the second accused auto, that on 25/04/2014 around 05.00 pm, near Sudalaimadasamy temple, all the accused had demanded Rs.5,000/- as mamool and for overtaking the auto; since PW2 refused to pay the amount, the accused had formed enmity against PW2.

3.It is their further case that on 30.04.2014 around 08.00 pm, PW2, after finishing his dinner and while returning, after providing salary to his workers in bazaar around 11.45 pm while he was standing near TVS Mathi Motor along with his friends, the second accused stopped his auto at TVS Mathi Motor, the accused 1 and 3 got down from the auto, both of them had taken aruval brought by them, that all the three accused had shouted PW2 degrading his community and questioned why he did not give mamool and continued to do business against their dominant community, that the second accused had caught hold PW2 from back side and asked the other accused to kill him, that the first accused by abusing the PW2 in filthy



CRL MP(MD) No.2730 of 2024

WEB COPY

language had attacked him in his neck, left arm, arm pit, left cheeks, lips neck portion below chin and the third accused had attacked the PW2 over his stomach thereby pierced the stomach resulting in his intestine to come out of the stomach; that all the accused had threatened the witnesses that if they try to catch them, the same situation would result to them fled in the auto, which they came.

4.On the basis of the complaint given by the de-facto complainant, FIR came to be registered in Crime No.204 of 2014 on 01/05/2014 and that the respondent police, after completing the investigation, has filed the final report against the accused for the offences under Sections 294(b), 342, 307 and 506(2) IPC r/w Sections 3(1)(r)(s), 3(2)(Va) of SC/ST (POA) Amendment Ordinance 2014 and 3(2)(V) of SC/ST (POA) Act, 1989 and after committal to the Sessions Court, the case was taken on file in Spl.S.C.No.133 of 2015 and the same was transferred to the Special Court for trial of cases under SC/ST Act, Thoothukudi and the same was taken on file in S.C No.25 of 2020.

5.During trial, the prosecution has examined 19 witnesses as PW1 to PW19, exhibited 26 documents as Exs.P1 to Ex.P26 and marked 2 material objects as MO1 and MO2. The accused have adduced neither oral nor documentary evidence.

6.The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned



CRL MP(MD) No.2730 of 2024

WEB COPY

Judgment, dated 25.01.2023 finding the accused guilty for the offences under Sections 307 r/w 34 IPC and sentenced them to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- each, in default to undergo 6 months Simple Imprisonment. Aggrieved by the said Judgment of conviction and sentence, the accused 1 and 2 have preferred the present appeals along with the above Miscellaneous Petitions seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioners would submit that so far as Kalirajan @ Kali is concerned, no specific overtact was attributed; Regarding the injuries, he has simply stated that he caught hold of the injured; PW2 soon-after the occurrence has not spoken about A2 to his father; PW4 to PW8 were not present in the place of occurrence; Even as per the evidence of PW13, the Medical Officer, there is no requirement for further treatment; So he was discharged from the hospital; More-over, the Doctor who examined or treated the injured was not examined as witness.

9.So far as the Subramanian is concerned, it was submitted that it is a labour issue between the accused and the de-facto complainant; He has spoken about the occurrence only after six months; Similarly, PW2 has not spoken anything about this petitioner; Medical records pertaining to the further treatment was not produced by



CRL MP(MD) No.2730 of 2024

the prosecution. According to the petitioners, considering the incarceration period, they may be granted bail by suspending the sentence.

10. But the earlier applications came to be dismissed considering the grievous nature of the injuries caused to the injury. Absolutely, there is no change of circumstances, except the period of incarceration. So no re-appreciation of the evidence is required at this stage, considering the nature of the injuries caused to them.

11. The learned Government Advocate (Criminal side) would submit that the judgment of conviction and sentence passed by the trial court requires no interference, since enough materials were available against the petitioners.

12. Reading of the evidence of PW3 shows that he is taking treatment for more than six months. A1-Subramanian stated to have caused assault on his neck, left cheek and low jaw, so also A2 caused injury on his stomach region.

13. No doubt that after six months only, he was able to narrate the occurrence. Whether the delay caused any defect in the prosecution case is the only point to be considered at the time of main appeal.

14. So, I find no reason to suspend the sentence. The Registry is directed to prepare the type set so that the main appeal may be taken up for hearing.



CRL MP(MD) No.2730 of 2024

15. In the result, these miscellaneous petitions are dismissed.

WEB COPY

sd/-
09/09/2024

/ TRUE COPY /

/10/2024

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

TO

1 THE SESSIONS JUDGE, SPECIAL COURT FOR SC/ST (POA) ACT,
THOOTHUKUDI (FAC).

2 THE DEPUTY SUPERINTENDENT OF POLICE,
O/O. DEPUTY SUPERINTENDENT OF POLICE,
SATHANKULAM POLICE STATION, THOOTHUKUDI DISTRICT.

3 THE INSPECTOR OF POLICE, SATHANKULAM POLICE STATION,
THOOTHUKUDI DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

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

ORDER IN

Crl.MP(MD)No.2730 of 2024 in Crl.A(MD)No.148 of 2023
and

Crl.MP(MD)No.2778 of 2024 in Crl.A(MD)No.134 of 2023

Date :09/09/2024

RS/MMS/SAR-(16.10.2024) 7P 6C

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