



CRL MP(MD) No.17438 of 2023

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

Friday, the Fifth 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.17438 of 2023
in
CRL A(MD)No. 1097 of 2023

THANGAMALAI

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
THALAVAIPURAM POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.222/2011.

... RESPONDENT/RESPONDENT

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 Addl District and Sessions Court, Srivilliputhur in SC No.218/2011 dt.21.09.2023 and enlarge the Petitioner /Accused No.2 on bail, till the disposal of the Criminal Appeal.

PRAYER IN CRL A(MD)No. 1097 of 2023:

Pleased to admit this appeal on file and call for records from the Lower Court and set aside the Judgment passed by the Learned Additional District and Sessions Court, Srivilliputhur in S.C.No. 218 OF 2011 dated 21.09.2023 by allowing this appeal.



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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.V.KATHIRVELU, Senior Counsel for M/S.K.PRABHU, 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.]

Seeking to suspend the sentence imposed on the petitioner by the learned Additional District and Sessions Judge, Srivilliputhur, vide Judgment dated 21.09.2023 in S.C.No.218 of 2011, he has filed this criminal miscellaneous petition.

2. The petitioner stands convicted and sentenced as under:

Section of Law	Sentence imprisonment	of	Fine amount
449 I.P.C.	To undergo imprisonment	life	Rs.1000/-, in default to undergo three months simple imprisonment.
302 I.P.C.	To undergo imprisonment	life	Rs.1000/-, in default to undergo three months simple imprisonment.
392 I.P.C.	To undergo ten years rigorous imprisonment		Rs.1000/-, in default to undergo three months simple imprisonment.

3. The case of the prosecution is that on 04.05.2011 at about 12.15 p.m., the petitioner and other accused entered into the house of the deceased, murdered her and stolen the gold ornaments worth about Rs.75,000/-

4. Learned Senior Counsel for the petitioner would submit that it is a case of

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circumstantial evidence based on the last seen theory. P.Ws.4 to 6 are stated to be the witnesses, who have last seen the petitioner along with other accused entering into the house of the deceased. Though P.W.6 has admitted to have read about the incident in the newspaper on the next day i.e. on 05.05.2011 and that he was also examined by the respondent - Police on the same day, he had not informed to the Police about having seen the accused and only after arrest of the accused, his statement has been recorded by the Police and thereby, his evidence is doubtful. Further, even as per the evidence of the Investigating Officer, chance finger prints were lifted at the scene of occurrence and after arrest of the accused, their finger prints had been taken. Whereas, the prosecution had not taken any steps to compare the finger prints. He would further submit that the petitioner is a Diploma Holder in Mechanical Engineering and he was arrested, when he had come to his village. Further, there are several arguable points in favour of the petitioner and 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.

5. The respondent - Police has filed a detailed counter affidavit.

6. Learned Additional Public Prosecutor appearing for the respondent - Police, on instructions, would submit that it is a case of murder for gain. P.Ws.4 to 6 have last seen the petitioner and the other accused entering into the house of the deceased



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and based on the confession statement of the petitioner, incriminating materials have been recovered, thereby, he would object for grant of suspension of sentence to the petitioner.

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

8. Having gone through the records and taking into consideration the facts and circumstances of the case , we are of the opinion that it is a fit case for grant of suspension of sentence to the petitioner.

9. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner herein is suspended, 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, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Srivilliputhur.

ii. 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.



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iii. The petitioner shall appear before the learned Additional District and Sessions Judge, Srivilliputhur, at 10.30 a.m., on the first working day of every calender month, until further orders.

sd/-
05/07/2024

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09/07/2024
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

KRK
TO

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

+1 CC to M/s.K.PRABHU, Advocate (SR-7512[I] dated 05/07/2024)

ORDER
IN
CRL MP(MD) No.17438 of 2023
in
CRL A(MD)No. 1097 of 2023
Date :05/07/2024

PKP/09.07.2024/ 5P/ 6C

Madurai Bench of Madras High Court is issuing certified
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