



CRL A(MD) No.1021 of 2023

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

Wednesday, the Eighteenth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN
and
The Hon`ble Mr.Justice J.SATHYA NARAYANA PRASAD

CRL MP(MD) Nos.17381 and 17382 of 2023
in
CRL A(MD) No.1021 of 2023

RAMASUBRAMANIAN @ RAMASUBBU ... Petitioner / Appellant / Accused No.1
in CRL MP(MD) No.17381 of 2023

MARIMUTHU ... Petitioner / Appellant / Accused No.2
in CRL MP(MD) No.17382 of 2023

Vs

THE INSPECTOR OF POLICE
MURAPANADU POLICE STATION,
THOOTHUKUDI DISTRICT.
(CRIME NO.68/2023).

... Respondent / Respondent /
Complainant in both petitions

Prayer in CRL MP(MD). 17381/ 2023 :

To suspend the Execution of sentence by granting bail to the petitioner in S.C.No.285/2023 dt.15.09.2023 on the file of the Learned Principal Session Judge, Thoothukudi, Thoothukudi District till the disposal of the Criminal Appeal.

Prayer in CRL MP(MD). 17382/ 2023 :

To suspend the Execution of sentence by granting bail in S.C.No.285/2023 dt.15.09.2023 on the file of the Learned Principal Session Judge, Thoothukudi,



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Thoothukudi District till the disposal of the Criminal Appeal.

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Prayer in CRL A(MD) No.1021 of 2023:

To call for the records from the lower Court in S.C.No.285 of 2023 on the file of the learned Principal Sessions Judge, Thoothukudi District and set aside the judgment dated 15.09.2023 by acquitting the appellants and by allowing the appeal.

Order : These criminal miscellaneous petitions 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 in both petitions and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent in both petitions, the Court made the following order:-

Both these petitions had been filed by A1 and A2, who had filed Crl. A. (MD) No.1021 of 2023 questioning the judgment of the Principal Sessions Court at Thoothukudi in S.C.No.285 of 2023 dated 15.09.2023. By which judgment, the learned Principal Sessions Judge had convicted both the accused/A1 and A2 for offences punishable under Sections 449 IPC, 302 IPC and 506 (ii) IPC. The sentence imposed by the learned Trial Judge is as follows:-

S.No	Offence	Sentence	Fine	In default sentence
1.	Section 449 IPC	5 years rigorous imprisonment	1000/-	1 month rigorous imprisonment
2.	Section 302 IPC	Life imprisonment	2000/-	3 months rigorous imprisonment
3.	Section 506 (ii) IPC	1 year rigorous imprisonment	--	---



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2. One factor which has to be stated even before examining the petition seeking suspension of sentence is that it is contended that both the petitioners/accused were not granted bail during the course of trial. It is the case of the prosecution that as against A1, there are 8 pending cases including the present case in which, 5 cases are pending trial and two cases are under investigation and in this case, he had been convicted for offences punishable under Sections 449, 332, 302 and 506 (ii) IPC. It is also the case of the prosecution that as against A2, there are five previous cases including the present case wherein he had also been convicted for the same offences.

3. The case of the prosecution is that the deceased who was a Village Administrative Officer at Kovilpathu Village, had earlier noticed the accused transporting river sand unlawfully and had informed the same to the jurisdictional Police Station and a First Information Report in Crime No.204 of 2022 had been registered by the Murappanadu Police Station. A1 had been arrested and released on bail. After that, proceedings under Section 110 Cr.P.C had been initiated by the Sub-Collector, Thoothukudi and the first accused had executed a bond.

4. It is the further case of the prosecution that on 13.04.2023 at about 05.00 a.m., the deceased who was the Village Administrative Officer and P.W.2, the



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Village Assistant had again noticed the accused transporting river sand unlawfully in a lorry and another complaint had been lodged which resulted in registration of a First Information Report again by Murappanadu Police Station. The appellants had been shown as an absconding accused.

5. It is the case of the prosecution that agitated over these lodging of complaints against them, the appellants had a direct motive as against the deceased. It is stated that on 25.04.2023, both the accused trespassed into the Village Administrative Officer's Office and A1 had assaulted the deceased with Aruval and A2 had assaulted the deceased with iron rod and caused injuries leading to the death of the Village Administrative Officer.

6. It had been stated that a complaint had been lodged by P.W.4, the son of the deceased and a First Information Report in Crime No.68 of 2023 had been registered for the offences punishable under Sections 449, 302 and 506 (ii) IPC. On conclusion of trial, the learned Sessions Judge had convicted and sentenced the accused as aforementioned.

7. The learned Senior Counsel for the appellants took serious umbrage as to the nature of the investigation and pointed out that the occurrence is said to have occurred at around 12.45 a.m. in the noon and the complaint had been lodged only at 3.45 p.m. The learned Senior Counsel pointed out that the distance between the



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police station and the scene of crime was hardly 0.5 km. The complaint and the First Information Report had been despatched to the jurisdictional Magistrate Court and had been received by the Magistrate only at 3.00 a.m. on 26.04.2023 after about ten hours. It is further pointed out by the learned Senior Counsel that the distance between the Court and the police station was about 20 kms.

8. It is also contended by the learned Senior Counsel that this delay in first lodging of the complaint and second in the receipt of the said First Information Report and complaint by the Magistrate, had not been explained by the prosecution.

9. It is further pointed out by the learned Senior Counsel that immediately after the occurrence, a stranger person who had not been identified or examined before the Court had rushed into the police station and had informed the police personnel about the incident which had happened and that even without registration of the First Information Report, which was only later at 3.45 p.m., the police personnel who were available in the police station had reached the scene of crime.

10. It is further contended by the learned Senior Counsel that P.W.1, who said to be an eye-witness for the occurrence, is a chance witness. It is in evidence that P.W.1 stated that he had come to the office of his father/deceased carrying a tiffin box for a lunch and at that time, he had seen the accused persons assaulting his



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father. It is also contended that P.W.2, who is the Village Assistant was also an eye-witness. However, the learned Senior Counsel stated that the Village Assistant had also accompanied the deceased when they had noticed the accused transporting river sand unlawfully in a lorry and had lodged a police complaint and it is stated that therefore, there was every possibility of the accused harbouring the same motive not only against the deceased but also against the Village Assistant but still had not even injured P.W.2, the Village Assistant.

11. The learned Senior Counsel therefore doubted the presence of both P.W.1 and P.W.2 at the scene of occurrence and also doubted their evidence that they witnessed the occurrence. The learned Senior Counsel also pointed out that the arrest of the accused and pointed out that P.W.1 had stated that that within two hours the accused had been arrested but P.W.6 had stated that only subsequently the accused had been arrested. It is therefore contended that when the arrest itself is doubtful, arguable points have been raised and suspension of sentence should be granted.

12. The learned Senior Counsel further pointed out that there was an earlier incident when a complaint had also been lodged as against the deceased under Section 307 IPC. There was also a complaint given by a lady against the deceased. The deceased had, in turn, instituted a civil suit claiming damages of



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Rs.3,00,000/- in which, he had impleaded all the revenue officials right from the District Collector onwards as defendants. It is therefore strongly contended by the learned Senior Counsel that though it is on evidence that a stranger person had entered into the police station and informed about the incident in the first instance, though there were CCTV cameras available, no investigation had been run to identify the said person. The information received was also not recorded in the General Diary.

13. The learned Senior Counsel also pointed out that the Panchayatars had not been examined as witnesses. He also pointed out that the delay in forwarding the First Information Report and the complaint to the Court had not been explained, the arrest had not been properly explained, the person who had given the information in the first instance to the police station had not been identified and had not been examined as witness before the Court and images in the CCTV camera had also not been produced and on the other hand, the learned Senior Counsel also stated that no reason given as to why the accused had not also attacked P.W.2, the Village Assistant, who was also present with the deceased when they had noted the accused transporting river sand unlawfully.

14. The learned Senior Counsel therefore stated that taking into consideration all these factors, the Court should suspend the sentence alone.



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15. The learned Additional Public Prosecutor, on the other hand, pointed out that the prosecution relied on the evidence of P.W.1 and P.W.2 who were eye-witnesses and also the evidence of P.W.5 and P.W.6 who had noticed the conduct of the accused subsequent to the occurrence coming out with an Aruval and iron rod in their hands.

16. The learned Additional Public Prosecutor further pointed out that during the course of investigation, the blood stained clothes of the accused had been recovered and on analysis, the blood stains matched with the blood group of the deceased. He also pointed that the Finger Print Expert had been examined as a witness and the finger prints of the accused were found in the scene of crime.

17. It was also pointed out by the learned Additional Public Prosecutor that both the accused had several previous cases as against them. He also pointed out that the accused were not released on bail during the course of trial and therefore stated that at the time of arguing an appeal, grant of suspension of sentence would not be appropriate by this Court.

18. We have carefully considered the arguments advanced.

19. This is a case where a Village Administrative Officer had been done to death on 25.04.2023 presumably for having informed against the accused for transporting river sand unlawfully. There was one earlier incident when the



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deceased as Village Administrative Officer had lodged a complaint against the accused for transporting river sand. On the second occasion, the accused were again found transporting river sand by the deceased and also by P.W.2, Village Assistant.

20. It is the contention of the learned Senior Counsel that the accused should have harboured enmity also against P.W.2, Village Assistant and there was no reason as to why the accused did not attack him. This issue can never be answered.

21. The complainant, with respect to the incident of unlawful transporting of river sand was the Village Administrative Officer, the deceased. The fact that the deceased had earlier cases against him and that he instituted a civil suit for claiming damages of Rs.3,00,000/- cannot be held against the deceased, or be grounds in favour of the accused.

22. The primary motive is the complaint lodged by the deceased against the accused for transporting river sand. In the earlier occasion, when a similar complaint had been lodged, the accused had to execute a bond under Section 110 Cr.P.C before the Sub-Collector. A repeat offence and a further complaint would only invite more stringent action taken against the accused.

23. The presence of P.W.1 had been quite seriously questioned by the learned Senior Counsel who stated that P.W.1 had given as reason that he had



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brought lunch in a tiffin box for his father/the deceased. It was pointed out that the said tiffin box had not been recovered. The presence of P.W.1, is what is material. He had lodged the complaint.

24. The issue relating to the alleged delay in lodging the complaint or in forwarding the First Information Report and the complaint to the Court had been examined even by the trial Court. It had been observed by the learned Sessions Judge that after the complaint had been lodged on 25.04.2023 at 3.45 p.m., the First Information Report had been registered.

25. The learned Trial Judge has brushed away the allegation of delay and stated that the complained was lodged after the deceased was taken to the hospital by both P.W.1 and by the Village Assistant, P.W.2 to the Tirunelveli Government Hospital and thereafter, when the deceased had been confirmed dead at 2.45 p.m., they had come back to the police station and lodged the complaint at 3.45 p.m.

26. There is specific evidence which speak directly against the accused. The first is recovery of blood stained clothes of the accused and analysis of the blood stains showed that they matched with the blood group of the deceased. That could not be a chance matching. The second is the presence of finger prints of the accused at the scene of crime. Again that would only establish the presence of the accused at that scene of crime. The presence of P.W.1 is only natural. The non-recovery of tiffin



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box is an issue which can be argued at the time of arguing the criminal appeal.

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27. The fact that the both accused were not granted bail during the entire period of trial and the fact that there were several previous cases against the two accused and the further fact that while discharging public duty, the Village Administrative Officer had been done to death in broad day light and at the scene of crime, the finger prints of the accused were found are sufficient facts to hold that suspension of sentence may not be an appropriate order to be passed.

28. The criminal appeal had been taken on record and had been admitted. We would give opportunity to argue on all these points at the time of hearing the criminal appeal but we are of the opinion that suspension of sentence cannot be countenanced at this stage and accordingly, these petitions stand dismissed.

sd/-
18/09/2024

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/09/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To **மேலாட்சி**

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1.The Principal Sessions Judge,
Thoothukudi, Thoothukudi District.

2.The Inspector of Police,
Murapanadu Police Station,
Thoothukudi District.

3.The Superintendent,
Central Prison, Palayamkottai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) Nos.17381 and 17382 of 2023
in
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Date :18/09/2024

ED/ VR /SAR- (23/09/2024) 12P / 5C

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