



Crl.M.P.No.3198 of 2025  
in Crl.A.No.204 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN  
and  
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.M.P.No.3198 of 2025  
in  
Crl.A.No.204 of 2025  
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S.Sivakumar, S/o Shanmugam  
(convict prisoner, now confined in  
Central Prison-I, Puzhal, Chennai-66)

.. Petitioner

Vs.

State by:  
The Inspector of Police,  
J.J.Nagar Police Station,  
Chennai-600 037.  
(Crime No.635 of 2021)

.. Respondent

Criminal Miscellaneous Petition filed under Section 528 of the BNSS  
praying to suspend the sentence imposed against the petitioner on 20.07.2023 in  
S.C.No.135 of 2021 on the file of the Special Court III Additional District and  
Sessions Judge, Tiruvallur at Poonamallee and release the petitioner on bail till  
the disposal of the Criminal Appeal.

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For petitioner : M/s.P.Pugalenth

For respondent: Mr.A.Damodaran, Addl.P.P.

assisted by Mr.M.Arifa Thasneem

ORDER

(The Order of the Court was made by P.Velmurugan, J)

This petition has been filed to suspend the sentence imposed against the petitioner/accused on 20.07.2023 in S.C.No.135 of 2021 on the file of the Special Court, III Additional District and Sessions Judge, Tiruvallur at Poonamallee and release the petitioner on bail till the disposal of the Criminal Appeal.

2. The respondent-Police had registered a case against the petitioner in Crime No.635 of 2021 for the offences under Sections 302 IPC and 341 IPC. After investigation, the respondent-Police laid charge-sheet before the jurisdictional Magistrate. The learned Magistrate has taken the case on file in P.R.C.No.19 of 2021. After completion of all formalities under Section 207 Cr.PC., the case was committed to the Court of Session for the alleged offences committed by the petitioner/accused and the same is triable exclusively only by the Sessions Court. The learned Principal Sessions Court took up the case on file

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in S.C.No.135 of 2021 and it was made over to the III Additional District and Sessions Judge, Tiruvallur, and he took up the case on file.

3. The learned trial Judge, after completing all formalities, framed charges against the accused for the offences under Sections 341 and 302 IPC. Thereafter, during the trial, in order to substantiate the case of the prosecution, on the side of prosecution, 13 witnesses were examined and 21 documents were marked, besides 4 Material Objects were produced. On the side of defence, no oral and documentary evidence were let in.

4. After trial, the petitioner was convicted and sentenced to undergo life imprisonment for the offence under Section 302 IPC and to pay fine of Rs.300/-, in default, to undergo one month simple imprisonment. The petitioner was acquitted of the charge under Section 341 IPC. Challenging the said conviction and sentence, the accused has preferred the present criminal appeal and pending the appeal, this miscellaneous petition is filed for suspension of sentence and to release him on bail.

5. Learned counsel for the petitioner/accused submitted that, though P.W.2 has been shown as an eye-witness, there is no specific overt act against



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the petitioner. Even according to the prosecution, the petitioner, after seeing the occurrence, went and informed to P.W.1 and when he came to the place of occurrence, the dead body was not found in the scene of occurrence. Therefore, P.W.2 could not have been the eye-witness, as he could not have seen the occurrence. The deceased was brought to the hospital for first-aid treatment and even P.W.9 Doctor made entry in the Accident Register as "unknown person" who brought the deceased for treatment. But when there is unknown person involved in the offence, the Inspector of Police should have conducted Identification Parade and the accused should also have been identified by the eye-witness. The prosecution has not conducted Test Identification Parade and hence, it has to be inferred that the prosecution has not proved its case beyond all reasonable doubts. The "benefit of doubt" should have been extended to the petitioner/accused, whereas, the trial Court failed to extend the said "benefit of doubt" and that the petitioner/accused has got a good chance of success in the main appeal, and therefore, it is prayed that, pending the appeal, the sentence imposed on the petitioner/accused may be suspended and he be released on bail.

6. Per contra, learned Additional Public Prosecutor appearing for the respondent-Police submitted that P.W.2, who was the eye-witness to the



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occurrence, has stated about the occurrence and also about the specific overt act attributed against the petitioner. The ante-mortem injury shown in the post-mortem report clearly shows that the deceased sustained injuries on his vital parts, and therefore, the trial Court has rightly appreciated both oral and documentary evidence and accordingly, he was convicted. The prosecution has proved its case beyond all reasonable doubts through eye-witness and that the CCTV footage was also marked after obtaining necessary certificate under Section 65-B of the Indian Evidence Act. Therefore, the medical records and evidence are also corroborating with the offence alleged to have been committed by the accused. There is no merit in the appeal and hence, the learned Additional Public Prosecutor ultimately submitted that the petitioner/accused is not entitled for suspension of sentence.

7. Heard both sides and perused the materials available on record.

8. This is a case registered against the accused for the offence under Section 302 IPC. The charges were also framed and after framing of charges, and during the trial, the prosecution examined P.Ws.1 to 13 and marked Exs.P-1 to P-21 and M.Os.1 to 4 were produced. P.W.2 is the eye-witness to the occurrence and P.W.1 is the de-facto complainant who set the law in motion.

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9. On a reading of the evidence of P.W.2, it is clear that there is a specific overt act against the petitioner and on a further reading of the evidence of P.Ws.9 to 11 (Doctors) and also the medical records, it is clear that the same corroborates with the injuries sustained by the deceased. As per the opinion of the Doctor, it is clear that the injuries are mainly head injuries.

10. Therefore, it is crystal clear that there is specific overt-act attributed against the petitioner/accused and that the points raised by the petitioner/accused in this petition, can be decided on merits only after hearing the main appeal itself for final disposal. On a reading of the oral and documentary evidence, it is clear that there is prima-face case for conviction of the petitioner/accused, and therefore, the petitioner is not entitled for suspension of sentence. This petition is accordingly dismissed.

11. Further, since the Registry has already prepared the typed set of papers and now made it ready for hearing, list the appeal itself for final hearing after four weeks.

(P.V., J) (M.J.R., J)  
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To

1. III Additional District and Sessions Judge, Tiruvallur at Poonamallee.
2. The Inspector of Police, J.J.Nagar Police Station, Chennai-600 037
3. The Public Prosecutor, High Court, Madras.



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