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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2025

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.M.P.No.2957 & 16708 of 2025

in Crl.A.Nos.535 of 2023 & 1406 of 2025

Crl.M.P.No.2957 of 2025

Pothishkumar @ Sabari

... Petitioner/A2

-VS-

The State Rep.

The Inspector of Police

Chennimalai Police Station

Crime No.227 of 2021

Erode District

... Respondent

Crl.M.P.No.16708 of 2025

Kalyanasundharam

... Petitioner/A1

-VS-

The State Rep.

The Inspector of Police

Chennimalai Police Station

Erode District

(Crime No.227 of 2021)

... Respondent

Prayer in Crl.M.P.No.2957 of 2025: Petition filed under Section 528 of

BNSS, to enlarge the petitioner on bail by suspending the sentence



imposed on him in S.C.No.92 of 2021 on the file of the learned Sessions Judge, Magalir Neethimandram/Fast Track Mahila Court, Erode dated 09.01.2023.

Prayer in Crl.M.P.No.16708 of 2025: Petition filed under Section 528 of BNSS, to enlarge the petitioner on bail by suspending the sentence imposed on him in S.C.No.92 of 2021 on the file of the learned Sessions Judge, Magalir Neethimandram/Fast Track Mahila Court, Erode dated 09.01.2023.

For Petitioners : Mr.N.Manokaran
in Crl.MP.No.2957 of 2025
Mr.B.Vasudevan for Mr.K.T.Sivakumar
in Crl.MP.No.16708 of 2025

For Respondent : Mr.A.Damodaran
Addl. Public Prosecutor
assisted by
M/s.M.Arifa Thasneem

COMMON ORDER

CMP.No.2957 of 2025 has been filed seeking to suspend the sentence and conviction made in the judgment in S.C.No.92 of 2021 on



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the file of the learned Sessions Judge, Magalir Neethimandram/Fast

Track Mahila Court, Erode dated 09.01.2023, pending disposal of the

Criminal Appeal before this Court and enlarge the petitioner/A2 on bail.

CMP.No.16708 of 2025 has been filed seeking to suspend

the sentence and conviction made in the judgment in S.C.No.92 of 2021

on the file of the learned Sessions Judge, Magalir Neethimandram/Fast

Track Mahila Court, Erode dated 09.01.2023, pending disposal of the

Criminal Appeal before this Court and enlarge the petitioner/A1 on bail.

2. Learned Sessions Judge, Magalir Neethi Mandram (Fast

Track Mahila Court) Erode, in S.C.No.92 of 2021, had convicted and

sentenced the petitioners as follows:

<i>Rank of the Accused</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>Fine</i>
A1	449 of IPC	Rigorous imprisonment for 10 years	Rs.5000/- in default to undergo further simple imprisonment for 3 months
A1	302 r/w 114 of IPC (4 counts)	Rigorous imprisonment for	Rs.5000/- each in default to undergo further simple



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		life of each counts	imprisonment for six months for each counts and shall not be released, unless he complete thirty five years of actual imprisonment without any statutory remission or commutation
A2	449 of IPC	Rigorous imprisonment for 10 years	Rs.5000/- in default to undergo further simple imprisonment for 3 months
A2	302 of IPC (4 counts)	Rigorous imprisonment for life of each counts	Rs.5000/- each in default to undergo further simple imprisonment for six months for each counts
These sentences are ordered to run concurrently			

3. Challenging the above conviction and sentence, the petitioners have filed the present criminal Appeals and they seek suspension of sentence and bail in the present Miscellaneous Petitions.

4. The case of the prosecution is that A1 has borrowed a sum of Rs.14 lakhs from the deceased No.1. He insisted for payment of amount, however, A1 has dodged the payment, therefore, the deceased



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No.1 fixed a deadline for paying that amount otherwise, he will call for panchayat in the village and also there was some property dispute, therefore, A1 decided to do away the deceased family. Accordingly, on 26.06.2021, A1 brought A2 under the pretext that he give some tablets to the deceased family and he will get job to A2 in the panchayat office. Accordingly, it is the case that on 26.06.2021, A1 and A2 came to the house of the deceased and they were all inside the house and A2 gave tablets "Aluminium Phospate", thereafter, all of them died one by one in the hospital. The Trial Court had convicted and sentenced the accused as stated supra.

5. Learned counsel for the appellant / petitioner/A2 submitted that A2 is in the custody from the date of conviction and there are no evidences available as against the A2 and the entire case rests on the circumstantial evidences. Further, he would point out that as far as the presence of A2, the same is not established by the prosecution and even by dying declaration, Ex.P26, P27 and P45, the identity of A2 is not established. On the particular day, A2 was a student and he has



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participated in the online examination conducted by the Bharathidasan Arts and Science College. In the absence of any evidence to link the accused with the alleged occurrence, the judgment of conviction passed against the petitioner is erroneous. He further submitted that there are arguable points available in the Criminal Appeal and that the petitioner/A2 has a fair chance of succeeding in the same. Therefore, the substantive sentence imposed against the appellant / petitioner/ A2 may be suspended. He further submitted that the appellant / petitioner / A2 is ready to abide by any condition imposed by this Court.

6. The learned Additional Public Prosecutor submitted that there are materials as against the accused.

7. We have heard the rival submissions and perused the entire materials available on record.

8. The entire case rests on the circumstantial evidence. Unfortunately, the death has occurred due to administering of poison. It is the specific case of the prosecution, A1 has hired A2 who was a student. A2 under the pretext of of giving corona tablets gave tablets to all of them



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and later, A1 and A2 left the place in the same bike. On perusal of the entire evidence, the identity of A2 has not been clinchingly established by the prosecution. Though the prosecution relied the identity parade of PW8, who is said to have seen the accused, it creates some doubt, since, according to him, he he has seen the photographs prior to the identification parade. Further, the so-called recovery from the accused A2 has not been established and the signature said to be made by the A2 in the note book has also not been established. A2 is also now pursuing ITI from the prison. As the evidences are doubtful against him, we are of the view that A2 has made out a *prima facie* case for suspending the sentence.

9. Accordingly, considering the submissions made on either side and taking into account the fact that the Criminal Appeal is not likely to be taken up for final hearing in the near future, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions.

10. Accordingly, the Criminal Miscellaneous Petition in



Crl.M.P.No.2957 of 2025 stands **allowed** and the sentence imposed on the

petitioner/A2 is suspended on the following conditions:-

(i) The petitioner/A2 shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with two sureties for a like sum to the satisfaction of the learned Judicial Magistrate, Perundurai;

(ii) The petitioner/A2 and 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 pass Book and mobile numbers to ensure their identity;

(iii) The petitioner/A2 shall appear before the trial Court on every Monday at 10.30 a.m., until the disposal of the Criminal Appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

(iv) On the failure of any of the above conditions by the petitioner / accused, it is open to the trial Court to commit the petitioner / accused into custody for undergoing the sentence.

10. However, with regard to the petition filed by the petitioner/A1

in Crl.M.P.No.16708 of 2025, the same stands dismissed.



(N.S.K.,J.) (M.J.R.,J.)

27.11.2025

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To

1. The Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Erode
2. The Judicial Magistrate, Perundurai
3. The Superintendent
Central Prison, Trichy
4. The Inspector of Police
Chennimalai Police Station
Erode District

N.SATHISH KUMAR, J.

AND

M.JOTHIRAMAN, J.

dhk



5. The Public Prosecutor,
High Court, Madras.

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(1/2)