



*Crl.M.P.No.9361 of 2025
in Crl.A.No.430 of 2025*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Crl.M.P.No.9361 of 2025
in
Crl.A.No.430 of 2025

Mahalingam

...Petitioner

Vs.

State rep. by
Inspector of Police,
Palacode, Dharmapuri District.

...Respondent

Prayer: Petition filed under Section 430(1) of BNSS r/w 389(1) of Cr.P.C., seeking to suspend the sentence imposed upon the petitioner by the learned Sessions Judge, (FTC), Dharmapuri made in S.C.No.27 of 2018 by judgment dated 12.09.2019 and release him on bail.

For Petitioner : Mr.M.R.Thangavel

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



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ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein, who was arrayed as the 2nd accused before the Trial Court, has been convicted and sentenced as follows, through the judgment passed in S.C.No.27 of 2018 dated 12.09.2019:-

<i>Offence</i>	<i>Sentence imposed</i>
Section 302 r/w 34 of IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months rigorous imprisonment
Section 201 of IPC	Rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default to undergo 3 months rigorous imprisonment

2. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and seeks for suspension of sentence and bail in the present miscellaneous petition.

3. It is the submission of the learned counsel for the petitioner that though the prosecution claims that both A1 and A2 had committed the murder on 04.11.2017, the body was discovered only on 08.11.2017, based on the confession statements of both the accused. According to the learned



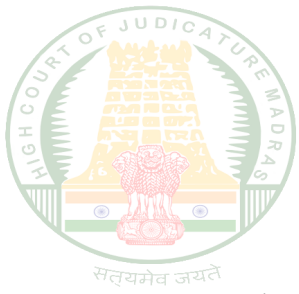
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counsel, both the accused had surrendered and gave their confession statements (Ex.P.5 and Ex.P.6) before P.W.12-Village Administrative Officer. However, since the Trial Court had disbelieved Ex.P.5 and Ex.P.6, the consequential recording of guilt by the Trial Court, based on the evidences of P.W.13 and P.W.14 who were not the last seen witnesses, cannot be sustained.

4. Per contra, the learned Additional Public Prosecutor submitted that the evidences of P.W.1, P.W.2, P.W.3, P.W.10. P.W.15, P.W.18 and P.W.19 clearly establish the motive on the part on the accused in having committed the crime. He further stated that when P.W.13 and P.W.14 had witnessed both the accused in front of the deceased's house on 04.11.2017, along with a gunny bag loaded in a two wheeler, this fact points out to the culpability on the part of the accused in having committed the crime.

5. As pointed out by the learned counsel for the petitioner, the Trial Court had rightly discarded the evidence of P.W.12, by holding that both the accused had not even subscribed their signatures in the confessions statements and the Village Assistant, who is claimed to have been present



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at that time, was also not examined. The office seal of the Village Administrative Officer is also not enclosed in Ex.P.5 and Ex.P.6. Since an extra-judicial confession requires to be appreciated with great care and caution, the Trial Court rightly disbelieved Ex.P.5 and Ex.P.6.

6. The evidences of P.W.13 and P.W.14 also do not indicate that they had last seen both the accused along with the deceased. At the most, their evidences could only indicate that they have seen the accused standing in front of the deceased's house along with a gunny bag and by no stretch of imagination, can it be construed that the deceased was inside the gunny bag. Apart from this, there are no clinching evidences to prove the guilt of the accused. However, this aspect could be deliberated at the stage of final hearing of the appeal.

7. In view of the *prima facie* case made out and by taking into consideration that the accused is said to be in imprisonment for almost 6 years from 12.09.2019, as well as the fact that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence of the petitioner.



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8. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence imposed on the petitioner/accused, is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, for a like sum to the satisfaction of the learned Judicial Magistrate, Palacode.
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the Trial Court may obtain a copy of their Aadhar Card or Bank Pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the Trial Court on the first working day of every month at 10.30 A.M., until the disposal of the 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 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.

[M.S.R, J.]

[V.L.N, J.]



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Note: Issue Order Copy on 11.07.2025

To

- 1.The Judicial Magistrate,
Palacode.
- 2.The Superintendent of Prisons,
Central Prison, Salem.
- 3.The Inspector of Police,
Palacode, Dharmapuri District.
- 4.The Public Prosecutor,
High Court of Madras.



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