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CRL MP No. 10054 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-05-2025

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL MP No. 10054 of 2025

in CRL A No.498 of 2025

Senthil @ Senthilkumar

S/o.Duraisamy Boyar, Vaikkalpalam Medu,
Ponnagar, Mettur Dam, Salem District.

Petitioner

Vs

The State Rep by,

The Inspector of Police,

Selvapuram Crime Branch Police Station, Coimbatore

District. Cr.No.752/2006 (Selvapuram PS)

Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 of CPC & 430 BNSS, praying to suspend the sentence imposed in the judgment dated 28.04.2025 made in S.C.No.280 of 2008 on the file of the First Additional Assistant Sessions Court, Coimbatore and release the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner: Mr.V.Elangovan

For Respondent: Mr.R.Vinothraja, Government Advocate (Crl.side)

ORDER

The petitioner/Accused in S.C.No.280 of 2008 was convicted by the trial Court by the judgment dated 28.04.2025 and sentenced to undergo five years



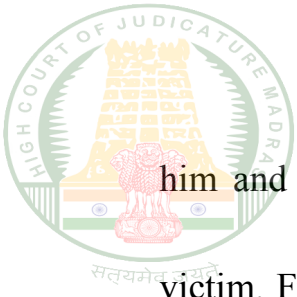
Rigorous Imprisonment for the offence under Section 394 IPC R/W Section 34

IPC with a fine amount of Rs.5,000/- in default to undergo three months RI,

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against which, the petitioner preferred the above appeal along with the instant miscellaneous petition seeking suspension of sentence and bail.

2.The contention of the petitioner is that the petitioner has been falsely implicated for the reason that the petitioner was closely moving with A1 and A3, who are the other two accused. In this case, A1 is the prime accused who caused injury to P.W.5/victim and taken away an amount of Rs.1,00,000/- from him. Further, petitioner's personal amount was also seized. He further submitted that P.W.1 is the relative of P.W.5/the victim. P.W.2 to P.W.4 are projected as eye-witness in this case. The contention of the petitioner is that the petitioner's photograph was published in papers and visual media, hence, the petitioner's identification is well known. Further, the petitioner was shown to the witnesses when in police station. Hence, there is no significance for Test Identification Parade. The specific overtact against the petitioner is that the petitioner had come along with A1 and A3, waylaid the victim and A1 said to have attacked



him and taken away the money and A3 thrown chilli powder on the face of victim. From the scene of occurrence there is no such chilli powder recovered.

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The overtact against the petitioner is that he was driving the Yamaha Motor bike in which all three accused travelled. To prove the case of the defence, D.W.1 to D.W.4 were examined as defence witnesses and 11 documents were marked as Ex.D.1 to Ex.D.11. D.W.1 is the petitioner/accused, D.W.2 to D.W.4 confirmed that the petitioner was not present in the scene of occurrence and he was forcibly taken from his house. There is no recovery from the petitioner, further the arrest and recovery witness not supported the prosecution case. The petitioner has got two children to be taken care and he is the only bread-winner of his family.

3.The learned Government Advocate (Crl.Side) submitted that P.W.1 had lodged a complaint that P.W.5 was attacked by three persons and an amount of Rs.1,00,000/- forcefully taken away from him. Thereafter, P.W.1 had taken P.W.5 to the hospital. P.W.8 Doctor who have attended P.W.5 and given the medical report. P.W.2 to P.W.4 are the eye-witnesses who had identified the



accused. In fact, P.W.3 and P.W.4 identified the accused during Test

Identification Parade. P.W.6 is the observation mahazar witness. P.W.7 is

witness for confession. He fairly submitted that the amount of Rs.1,00,000/-

recovered from A1 and not from the petitioner. Rs.17,000/- recovered from the

petitioner and this amount is the petitioner's amount and for this amount, the

petitioner has to give an explanation in his evidence.

4.Considering the submissions, it is seen trial Court not considered the defence witness more particularly the petitioner's explanation and the defence exhibits. The petitioner is convicted invoking Section 34 IPC, admittedly case against A1 split up in S.C.No.175 of 2024 and A3 died, pending trial. The petitioner is the sole accused in this case. Hence, conviction of the petitioner invoking Section 34 IPC is not sustainable. The petitioner's contention not considered by the trial Court which needs reconsideration. In view of the above, this Court is inclined to grant the relief of suspension of sentence to the petitioner.



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5. Accordingly, the substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate No.5, Coimbatore.

6. Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear before the Trial Court on that 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.

7. Accordingly, this Criminal Miscellaneous Petition is ordered.

gbi/jai

15-05-2025

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Note: Issue Order copy on 21.05.2025.

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To
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- 1.The State Rep by, The Inspector of
Police,
Selvapuram Crime Branch Police
Station, Coimbatore District.
Cr.No.752/2006.
- 2.The Superintendent
Central Prison, Coimbatore.
- 3.The Judicial Magistrate No.5,
Coimbatore.
- 4.The Public Prosecutor,
High Court of Madras,
Madras.



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M.NIRMAL KUMAR J.

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