



Crl.M.P.No.16497 of 2023
in Crl.A.No.1123 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2025

CORAM:

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

Crl.M.P.No.16497 of 2023
in Crl.A.No.1123 of 2023

Ajith Kumar

... Petitioner/Sole accused

Vs.

State By
The Inspector Of Police,
F-5, Choolaimedu Police Station,
Chennai-600 094
(Cr.No.213 of 2018)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to enlarge the petitioner on bail by suspending the sentence imposed in S.C.No.42 of 2019 dated 05.09.2023 on the file of the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai pending disposal of the Criminal Appeal on the file of this Court.



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For Petitioner : Mr.M.Rajkumar

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

ORDER

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

This Criminal Miscellaneous Petition has been filed seeking to enlarge the petitioner on bail by suspending the sentence imposed in S.C.No.42 of 2019 dated 05.09.2023 on the file of the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai pending disposal of the Criminal Appeal.

2. The petitioner is the sole accused in S.C.No.42 of 2019. The learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai vide judgment dated 05.09.2023 has convicted and sentenced him as follows:-



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<i>Accused</i>	<i>Offence</i>	<i>Sentence</i>
Sole accused	Section 450 IPC	5 years of RI and a fine of Rs.2,000/-, I/d 2 months of SI
	Section 302 IPC	Life imprisonment and a fine of Rs.10,000/- i/d. 3 months of SI
	Section 379 of IPC	3 years of RI and a fine of Rs.1,000/-, I/d 2 months of SI
	Section 201 of IPC	5 years and a fine of Rs.2,000/-,I/d 2 months of SI

The sentences are ordered to run concurrently.

3. While the judgment of the trial Court is under challenge in the main Appeal, the petitioner seeks for suspension of sentence in the present Miscellaneous Petition.

4. This is a case that rests upon circumstantial evidence. The main circumstances put forth by the prosecution to establish the case are motive, the last scene theory, recovery of jewels and recovery of the body. According to the prosecution, P.W.3 had seen the deceased on 06.04.2018 at 06.00 p.m and thereafter had seen the accused carrying a gunny bag at 06.30 p.m.



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5. We fail to understand as to how this could be termed as a case of the last seen theory, more particularly when P.W.3 had not seen the accused along with the deceased. In the absence of any clarity regarding the contents of the gunny bag carried by the accused, relying on the evidence of P.W.3 to conclude that the accused and the deceased were last seen together would be highly unsafe.

6. Insofar as the recovery of the jewels is concerned, P.W.2, the mother of the deceased, had categorically stated that the jewels recovered by the Investigation Officer do not belong to the deceased. Although the learned Additional Public Prosecutor submitted that P.W.3 and P.W.4, who are roommates, have identified the jewels as belonging to the deceased, such an evidence cannot be considered wholly reliable in view of the contradiction in identification by P.W.2. Therefore, we are not in a position to solely place reliance on the circumstance of the recovery of jewels.

7. Insofar as the identification of the body is concerned, the incident is claimed to have occurred on 06.04.2018 at 06.30 p.m., and the body was



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recovered only on 18.04.2018. P.W.19 is the doctor who had conducted postmortem on the deceased. As per his oral evidence, the body of the deceased was highly decomposed beyond recognition even by those well acquainted with the deceased. However, the prosecution claims that when P.W.2 was shown the body, she immediately recognized it as that of her daughter. This raises a serious doubt in our minds. Apart from this, the prosecution has not placed any other circumstances before the Trial Court to establish the identity of the body.

8. The learned counsel for the petitioner would submit that the petitioner is under imprisonment for the past 1 year and 9 months and seeks to enlarge the him on bail by suspending the sentence imposed on him.

9. In the light of all the above findings, there may be a fair chance of success for the petitioner to succeed in the appeal. Since the main appeal may not be taken up for final disposal in the near future, we are inclined to suspend the sentence of the petitioner/sole accused.



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10. Accordingly, this Criminal Miscellaneous Petition stands **allowed**, and the sentence imposed on the petitioner herein, is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, 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 XVII Metropolitan Magistrate, Saidapet, Chennai;

(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



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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.)

11.06.2025

Anu

Note: Issue order copy on 12 .06.2025

To

1.The Sessions Judge, Mahalir Neethimandram,
Allikulam, Chennai

2.The XVII Metropolitan Magistrate, Saidapet,
Chennai.

3.The Inspector Of Police,
F-5, Choolaimedu Police Station,
Chennai-600 094

4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.



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