



Crl.M.P.No.19711 of 2023
in Crl.A.No.1607 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2025

CORAM:

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

Crl.M.P.No.19711 of 2023
in Crl.A.No.1607 of 2023

Kundu Ganesan @ Ganesan

... Petitioner/A1

Vs.

State By
The Inspector Of Police,
Edapadi Police Station, Salem District
(Crime No.113 of 2017)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence against the petitioner / appellant in S.C.No.130 of 2018 on the file of the II Additional District and Sessions Judge, Salem vide judgement dated 09.11.2023 and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioners : Mr.R.Rajan

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

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

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by the learned II Additional District and Sessions Judge, Salem, on 09.11.2023 in S.C.No.130 of 2018 and enlarge him on bail.

2. It is the case of the prosecution that based on an earlier incident occurred on 14.03.2017, wherein the petitioner, along with two other accused had assaulted the deceased, all the three of them, had on the next day, attacked the deceased on his head with a wooden log.

3. The Trial Court, had acquitted A2 and A3 and convicted the petitioner/A1 alone for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and a fine of Rs.5,000/-, in default to undergo six months of simple imprisonment.



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4. Challenging the above conviction and sentence, the petitioner/A1 has filed the above Criminal Appeal and he seeks for suspension of sentence and bail in the present miscellaneous petition.

5. Learned counsel for the petitioner submitted that the Trial Court has clearly found that except P.W.3 and P.W.15, there were several contradictions in the statements of all the other eye witnesses.

6. Per contra, the learned Additional Public Prosecutor submitted that in this case, about 11 eye witnesses had seen the accused assaulting the deceased with a wooden log in a public place. He also referred to the medical evidences and submitted that the death had occurred due to the head injury caused by the petitioner and thereby, he opposed for suspending the sentence and grant of bail to the petitioner.

8. On a *prima facie* view, we have taken note of the fact that the Trial Court, while acquitting A2 and A3, had recorded that there were several contradictions in the statements of most of the eye witnesses and



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therefore, questioned the overt act attributed by the prosecution on the petitioner/A1. The Trial Court had also recorded that there was no evidence to show that A2 had handed over the wooden log to A1. If that being so, there is a possibility that the prosecution may have not properly established the case against the petitioner of having armed himself with the wooden log. On account of these infirmities in the evidences, the petitioner may have a fair chance of success in the main appeal.

9. It is also brought to our notice that the petitioner herein is under incarceration from the month of November 2023 onwards. Since the main appeal may not be taken up for final disposal in the near future and in view of the *pima facie* case recorded by us, we are inclined to suspend the sentence of the petitioner/A1.

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:-



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(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 Judicial Magistrate No.2, Sangagiri;

(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.)

04.06.2025

Anu

Note: Issue order copy on .06.2025



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M.S.RAMESH, J.
and
V. LAKSHMINARAYANAN, J.

Anu

To

- 1.The II Additional District and Sessions Judge, Salem
- 2.The Judicial Magistrate No.2, Sangagiri
- 3.The Inspector Of Police,
Edapadi Police Station, Salem District
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court, Madras.

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