



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.11585 of 2021

in

Crl.A.No.539 of 2021

N.S.Rajendran

... Petitioner

Vs.

The State of Tamil Nadu,
Represented by,
The Inspector of Police (Crime Branch),
CBCID,
Nagapattinam.
(Crime No.2 of 2015)

... Respondent

PRAYER: The Criminal Miscellaneous Petition is filed under Section 389(1) of the Code of Criminal Procedure, pleaded to suspend the sentence imposed by the Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.126 of 2016 dated 23.07.2021 and enlarge the petitioner on bail.

For Petitioner : Mr.K.M.Subramanian

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

(This case has been heard through Video Conferencing)

This Criminal Miscellaneous Petition has been filed by the petitioner/appellant, seeking suspension of sentence of imprisonment, imposed against the petitioner in S.C.No.126 of 2016 dated 23.07.2021 by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam.



2. In and by the judgment of the Trial court, the petitioner was found guilty and convicted and sentenced as follows:-

Offence u/s	Conviction & Sentence
304 (I) IPC	10 years R.I and to pay a fine of Rs.5,000/-, in default, undergo one month S.I.
218 IPC	2 years R.I and to pay a fine of Rs.5,000/-, in default, undergo one month S.I.
201 IPC	2 years R.I and to pay a fine of Rs.5,000/-, in default, undergo one month S.I.
217 IPC	2 years R.I and to pay a fine of Rs.5,000/-, in default, undergo one month S.I.

against which, the present Criminal Appeal has been filed.

3. After completion of investigation, the Respondent/Police has filed a final report against the petitioner/A1 for the offence under Sections 302 r/w Sec.34, 218, 201 & 217 IPC and as against A2, under Sections 302 r/w 34 IPC. The final report was taken on the file of the learned Chief Judicial Magistrate, Nagapattinam in P.R.C.No.1 of 2016 and after furnishing copies under Section 207 Cr.P.C, the case was committed to the District Sessions Judge, Nagapattinam and thereafter, it was made over to the Court of Sessions, Fast Track Mahila Court, Nagapattinam. The Trial Court, framed the charges against the petitioner/ A1 for the offences under Sections 304 (I), 218, 201 & 217 IPC and the other accused for the offences under Section 304 (I) r/w 34 IPC. When the charges were explained, the accused denied the charges and pleaded not guilty. On the side of the prosecution, PW1 to PW83 were examined and Ex.P1 to Ex.P63 were marked along with six Compact Discs (C.D) M.01 to M.06. While questioning under Section 313 Cr.P.C., the accused denied the charges. Further, no evidence was let in on the side of the accused. The Trial Court, found the petitioner and the other accused guilty and convicted and sentenced as stated above.

4. The submissions of Mr.K.M.Subramanian, learned counsel appearing for the petitioner are as under:-

(a) The prosecution has failed to prove the case beyond all reasonable doubts. The medical evidence is not conclusive to the fact that the victim succumbed to the injuries only due to the assault inflicted by the petitioner and the other accused. Though, the case of the prosecution is that the petitioner and the other accused

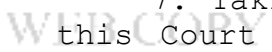


assaulted the victim and on being falling down, stamped on his stomach repeatedly with their boot legs, no corresponding injury was found on the victim.

(b) In this case, three Doctors have been examined. PW64/Dr.Mohammed Sirajutheen, who had admitted the victim and found that the victim was in an inebriated condition and his speech was incoherent and he deposed that the victim suddenly collapsed and fell down and become unconscious. He had also deposed that the victim sustained only with lacerated injury on the left palm and he further called PW65/Dr.Moitheen Abdul Kadhar, for giving further treatment and he had declared that the patient was dead. Thereafter, post mortem was conducted by PW69/Dr.Reshmi and she had stated that the victim had died of vasovagal shock and that the heart was sent for forensic analysis and the PW66/Dr.Padmanathan, who gave pathology report has stated that it was not possible to give any opinion, as the heart was in rotten stage.

(c) The petitioner/appellant was on bail during trial and subsequently, he is in custody from the date of conviction on 23.07.2021. The petitioner was an Inspector of Police and now, retired from service and suffering from diabetes. Taking into consideration the evidence of witnesses, there is absolutely no motive or intention on the part of the petitioner to cause death to the victim. The petitioner/appellant has got a fair chance of succeeding in the Criminal Appeal. There are arguable points available in the Criminal Appeal and the appeal is not likely to be taken for final hearing in the near future and he would pray the sentence imposed against the petitioner/appellant may be suspended and the petitioner may be enlarged on bail.

5. Mr.S.Sugendran, learned Government Advocate (Crl.Side) would submit that the petitioner was working as an Inspector of Police and on 31.12.2013, the victim, had parked his auto rickshaw in front of the shop causing disturbance to traffic and thereby, the petitioner along with his Sub-Inspector of Police, who were on duty, had asked the victim to move the vehicle, since the victim was in inebriated condition, he had quarreled with the petitioner and there was an altercation between them and since, the victim was in inebriated condition, had caught hold of the shirt of the petitioner and thereafter, the accused had assaulted him and due to which, he sustained injuries and he was taken to the hospital, where he was declared dead. The petitioner and the other accused have tampered with the records to screen the evidence. However, he would submit that the Trial Court, finding that the prosecution has proved that the petitioner and the other accused were responsible for the death of the victim, has convicted and sentenced as stated above. He would further submit that the petitioner was on bail during the trial.



7. Taking into consideration, the materials available on record, this Court is of the opinion that the petitioner had made out the case for grant of bail. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions:-

(b) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

8. The Criminal Miscellaneous Petition is ordered accordingly.

This order, on being produced, be punctually observed and carried
into execution by all concerned

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.



1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
NAGAPATTINAM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

3 THE INSPECTOR OF POLICE (CRIME BRANCH),
CBCID, NAGAPATTINAM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S K.M.SUBRAMANIAN Advocate on payment of necessary
charges SR.NO.1784

Order

in
CRL MP.11585/2021
in
CRL A.539/2021

Date :03/02/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

RW 03/02/2022