



Crl.M.P.No.14234 of 2021 in Crl.A.No.707 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.14234 of 2021

in

Crl.A.No.707 of 2021

Balaguru (M/43)

... Petitioner

Versus

State rep. by
The Inspector of Police,
D-3, Ice House Police Station, (L & O),
Chennai – 600 005.
(Crime No.188 of 2018)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence passed against the Appellant/Accused Judgment dated 15.12.2021 in S.C.No.200 of 2019 passed by the Court of the Learned XVII-Additional Sessions Judge, City Civil Court, Chennai, in so far as convicting the Appellant/Accused under Section 304(ii) of IPC, and sentencing him to undergo 10 years Simple Imprisonment and imposed with a fine of Rs.1000/- in default to undergo further period of 1 month Simple Imprisonment.

For Petitioner : Mr.M.Mushtaq Ahmed

For Respondent : Mr.S.Vinoth Kumar,
Government Advocate (Crl. Side)



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ORDER

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This Criminal Miscellaneous Petition is to suspend the sentence imposed on the petitioner by the Judgment, dated 15.12.2021 made in S.C.No.200 of 2019 on the file of the Learned XVII-Additional Sessions Judge, City Civil Court, Chennai, pending disposal of the above appeal.

2.Heard the learned Counsel for the petitioner and the learned Government Advocate (Criminal side) appearing for the respondent.

3.Learned Counsel for the petitioner would submit that in this case, on sudden provocation, the petitioner/accused attacked the deceased with wooden log, resulting in the injury, caused death to the victim. Considering in the said aspect, even the charge is under Section 302 of IPC., the petitioner was convicted for the offence under Section 304(ii) of IPC., and he is in prison from 15.12.2021. Therefore, he prays for grant of suspension of sentence.

4.Per contra, the learned Government Advocate (Criminal side) would submit that the prosecution, in this case, has proved the offence at the hilt, and only account of deadly blow given by the petitioner/accused



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with the wooden log, the deceased scammed due to injury. Therefore, the Trial Court has rightly convicted the petitioner and opposed the prayer of grant of suspension of sentence.

5.I have considered the rival submissions made on either side and perused the material records of this case.

6.Considering the nature of allegations and the grounds raised by the learned counsel for the petitioner for the purpose of making out a *prima facie* case and the petitioner is in prison from 15.12.2021, and considering the fact that it may take a while for this Court to take up the appeal for final hearing, I am of the view that this is a fit case for granting suspension of sentence to the petitioner pending disposal of the appeal on the following conditions:-

(a) the petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the Trial Court;

(b) the petitioner and the sureties shall affix their photographs and



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left thumb impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhar Cards or Bank Pass books to ensure their identities;

(c) the petitioner shall appear before the Trial Court on the first working day of every English Calendar Month at 10.30 A.M until the disposal of the Criminal 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 of 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. This Criminal Miscellaneous Petition is ordered accordingly.

26.08.2022

Index : yes/no
Speaking order/Non-speaking order

klt



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- To
- 1.The Inspector of Police, D-3, Ice House Police Station, (L & O), Chennai – 600 005.
 - 2.The Public Prosecutor, High Court of Madras.
 - 3.The Superintendent of Police, Central Prison, Puzhal, Chennai.
 - 4.The II- Metropolitan Magistrate, Egmore, Chennai.



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D.BHARATHA CHAKRAVARTHY. J.,

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