



CRL.M.P.(MD)No.14187 of 2022

CRL.M.P (MD) No.14187 of 2022
in
CRL.A. (MD) No.645 of 2022

G.ILANGO VAN, J.

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in S.C.No.6 of 2018, dated 16/08/2022 by the Principal Sessions Judge, Theni and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on 24/04/2017 at about 3.00 pm, the deceased was walking on the Surulipatti Main road near Karuppasamy Temple. When he was nearing Malaisamy Shop, a two wheeler was found parked by obstructing the way. When the deceased questioned the accused for having parked the vehicle, the accused suddenly got enraged and with an intention to cause death slapped on his cheeks and with his legs, kicked on his chest. Because of the sudden attack, the deceased fell down. He suffered head injury, was taken to the hospital, where he was declared to be dead, on 03/05/2017. On the basis of the above said occurrence, the case was registered and after completing the formalities of investigation, final report was filed.



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3. During the course of the trial process, on the side of the prosecution, 17 witnesses examined and 13 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

4. At the conclusion of the trial, the court found that the charge under section 304(ii) IPC stands proved against the accused and accordingly, convicted and sentenced him to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment.

5. Challenging the above said conviction and sentence, appeal has been preferred. Pending appeal, this criminal miscellaneous petition has been preferred seeking suspension of sentence.

6. Now the learned counsel appearing for the petitioner/accused would submit that absolutely, there was no motive between the deceased and this petitioner; Even though the case of the prosecution that there was sudden quarrel between them, without knowing the consequence of attack, the above said occurrence said to have been taken place.



7.Per contra, the learned Additional Public Prosecutor would fairly admit that there was sudden quarrel between the parties and the sudden provocation. But on knowing fully that if he pushed down the deceased by kicking on the chest will cause serious injury, the accused has committed the offence.

8.It is seen that there was no motive between them and due to sudden provocation, pushed him, there was injury on the head. Because of the head injury, the deceased died, on 03/05/2017 after nine days of treatment.

9.Further it is seen that no bad antecedent is also reported against the petitioner. Considering the above said aspect, whether in the above said circumstances of the case, the offence under section 304(ii) IPC is attracted or not is a matter for consideration in the main appeal.

10.Considering the above facts and circumstances of the case and also considering the period of incarceration of the petitioner and also considering the fact that it will take some time to hear the main appeal for disposal, **this criminal miscellaneous petition is allowed** and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following



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conditions:-

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(i)the petitioner is directed to be enlarged on bail on condition that the petitioner 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 Principal Sessions Judge, Theni; and

(ii)on further condition that the petitioner shall appear before the said Court daily at 10.30 am pending appeal.

29.11.2022

Index : Yes/No
Internet : Yes/No
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Copy to:- The Central Prison,
Madurai.

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