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Crl.M.P.No.501 of 2023 in Crl.A.No.45 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.501 of 2023
in Crl.A.No.45 of 2023

Charles
S/o Velayuthampillai .. Petitioner

-vs-

1. The Deputy Superintendent of Police
Kallakurichi
Villupuram District

2. The Inspector of Police
Kachirapalayam Police Station
Villupuram District
(Crime No.252 of 2014)

.. Respondents

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence passed in S.C.No.13 of 2016 dated 28.10.2022 by the Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Villupuram and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner :: Mr.R.Thamarai Selvan

For Respondents :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

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The petitioner has filed the appeal challenging the conviction and sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Villupuram vide judgment dated 28.10.2022 in S.C.No.13 of 2016 directing him to undergo simple imprisonment for one year for the offence under Section 448 of IPC; to undergo rigorous imprisonment for life and also to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for a period of three years for the offence under Section 302 of IPC; to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 201 of IPC, which are ordered to run concurrently. Pending the appeal, he has filed the present miscellaneous petition seeking to suspend the sentence and enlarge him on bail.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and also perused the materials available on record.



3. The case of the prosecution is that a dispute arose between the family of the accused and the deceased in respect of right of the deceased to have access to his land through a channel poramboke that runs through the land of the accused. It is the further case of the prosecution that the accused used to put thorns in the pathway in the said poramboke land so as to prevent the deceased and a petty quarrel arose between the family of the deceased and the accused in this regard. While so, on 07.12.2014, the deceased was found missing. During investigation, the de-facto complainant suspected the involvement of the first accused and his family members and as part of investigation, dog squad was called for and the sniffer dog caught hold of the first accused, the petitioner herein, who was arrested earlier on the same date. The prosecution relied upon the recovery of the body of the deceased on the basis of the confession of the accused. It is even stated in the counter affidavit that the accused identified the body of the deceased and material objects. Based on such recoveries and the evidence of P.W.21, dog squad trainer, the petitioner has been convicted and sentenced for the offence aforesaid.

4. But this Court finds that there are several discrepancies in the prosecution version. It is now admitted before this Court that the body was



recovered even before the alleged confessional statement made by the accused on 09.12.2014. It is also evident from the deposition of P.W.21, dog squad trainer that the sniffer dog smelling the shirt and lungi of the deceased from the place of occurrence had gone to various places and ultimately identified the accused in the police station, where he was kept in custody. That circumstance alone is not sufficient to conclude that the accused is guilty. Though P.W.3 has deposed that he saw the accused taking the deceased in a motorcycle, his statement appears to be not trustworthy, as it was recorded much later. Moreover, the statement of P.W.3 has not been corroborated by any other evidence. In these circumstances, this Court finds a prima facie case in favour of the petitioner for suspension of sentence.

5. Accordingly, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the petitioner is suspended and he is granted bail on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom one should be a blood relative, each for a likesum, to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and the Scheduled Tribes (Prevention of



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Atrocities) Act, Villupuram.

- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge 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.

(S.S.S.R.,J.) (S.M.,J.)

17.10.2023

SS

To

1. The Sessions Judge, Special Court for Exclusive Trial of Cases registered under the SC/ST (POA) Act, Villupuram
2. The Deputy Superintendent of Police, Kallakurichi, Villupuram District
3. The Inspector of Police, Kachirapalayam Police Station, Villupuram Dist.
4. The Superintendent, Central Prison, Cuddalore
5. The Public Prosecutor, High Court, Madras



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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

SS

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