



WEB COPY



Crl.M.P.No.3837 of 2023 in Crl.A.No.274 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM

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

Crl.M.P.No.3837 of 2023
in Crl.A.No.274 of 2023

Thiru.Ammasai
S/o Subbu

.. Petitioner

-VS-

State,
Inspector of Police
Nambiyur Police Station
Erode District
(Crime No.101 of 2019)

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence passed in S.C.No.63 of 2019 dated 27.02.2020 on the file of learned III Additional District and Sessions Judge, Erode at Gobichettipalayam and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner :: Mr.S.Silambuselvan

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



Crl.M.P.No.3837 of 2023 in Crl.A.No.274 of 2023

ORDER

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

WEB COPY

The petitioner stands convicted for the offence under Section 302 of IPC and sentenced to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of six months vide the judgment dated 27.02.2020 passed in S.C.No.63 of 2019 by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam. Challenging the said conviction and sentence, the petitioner has filed the appeal and the instant miscellaneous petition has been filed to suspend the sentence and enlarge him on bail, pending the appeal.

2. We have heard both sides and also perused the materials available on record.

3. It is the case of the prosecution that the deceased by name Kirubhakaran was a bachelor and was working as acting driver. About six months before occurrence, the deceased received a sum of Rs.1000/- from the accused. Since the deceased was delaying the repayment of the said sum, the case of the prosecution is that there was enmity between them,



which resulted in altercation on several occasions. From the evidence, it is seen that on 27.03.2019, at about 6.30 p.m., the accused obstructed the auto in which the deceased was travelling and used filthy language against the deceased. Again there was a wordy altercation between the deceased and the accused as per statement of one of the witnesses at 9.00 p.m. It is the case of the prosecution that in furtherance of the enmity, the accused came to the house of the deceased and assaulted him with Aruval on the left side of the deceased neck at 11.15 p.m., on the same day i.e., 27.03.2019 when the deceased was lying in a cot in his own house.

4. P.W.1 is the brother of the deceased. His evidence is only about the prior enmity between the accused and the deceased in relation to the sum of Rs.1000/-, which the deceased had borrowed from the accused. P.W.2 is an eye-witness who has witnessed the occurrence at 11.15 p.m. But the presence of P.W.2 is doubtful. The prosecution has not explained why the sniffer dog was brought to the scene of occurrence, if P.W.2 had already witnessed the occurrence. The evidence of P.W.2 as a whole appears to be based on information furnished to him, on the basis of the evidence gathered by the prosecution at the time of investigation. There are several vitiating circumstances to doubt the veracity of the evidence of P.W.2. It is also to be



noted that when the accused was asking and accusing the deceased wherever he sighted the deceased in public places for the default, the version of the prosecution that there was a strong motive for committing the crime, does not appear to be probable. Further, the petitioner is in confinement for more than three years. In such 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 Judicial Magistrate No.2, Gobichettipalayam.
- (ii) 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 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



Crl.M.P.No.3837 of 2023 in Crl.A.No.274 of 2023

date of his absence, as directed by the trial Court.

WEB COPY

(S.S.S.R.,J.) (S.M.,J.)
18.10.2023

SS

To

1. The III Additional District & Sessions Judge, Erode at Gobichetipalayam
2. The Judicial Magistrate No.2, Gobichettipalayam
3. The Inspector of Police, Nambiyur Police Station, Erode District
4. The Superintendent, Central Prison, Coimbatore
5. The Public Prosecutor, High Court, Madras



Crl.M.P.No.3837 of 2023 in Crl.A.No.274 of 2023

S.S.SUNDAR, J.
AND
SUNDER MOHAN, J.

SS

Crl.M.P.No.3837 of 2023
in Crl.A.No.274 of 2023

18.10.2023