



Crl.MP No.4272 of 2023 in
Crl.A.No.314 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.4272 of 2023

in

Crl.A.No.314 of 2023

Kumar

... Petitioner

Vs.

State Rep
Inspector of Police,
Mecheri Police Station,
Salem District,
(Crime No.201 of 2013)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence of the petitioner imposed by judgment dated 10.03.2023 passed by the learned II Additional District and Sessions Judge, Salem in S.C.No.46 of 2016 and enlarge the petitioner on bail, pending disposal of the above criminal appeal.



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For Petitioner : M/s.L.Mouli

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This petition is filed seeking to suspend the sentence imposed on the petitioner in S.C.No.46 of 2016 passed by the learned II Additional District and Sessions Judge, Salem dated 10.03.2023.

2.The Trial Court, by judgment dated 10.03.2023 passed in S.C.No.46 of 2016 convicted and sentenced the petitioner as extracted hereunder.

Rank of the accused	Conviction under Section	Sentence
Sole Accused	304 II IPC	The accused shall undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- , in default, to undergo simple Imprisonment for 6 months.



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3.Challenging the judgment of conviction and sentence, the petitioner preferred the present Criminal Appeal along with the instant petition, seeking to suspend the sentence of imprisonment.

4.The learned counsel for the petitioner submitted that the respondent-Police prosecuted the accused for the offence punishable under Section 304 II of I.P.C. After the trial, the trial Court found not guilty for the offence under Section 302 of I.P.C and found guilty for the offence under Section 304 II of I.P.C and convicted and sentenced the petitioner as stated above. The origin of the occurrence is due to dispute with regard to drawing of water in a common pipeline. There is no strong motive for the alleged occurrence. Now, the accused is in judicial custody from 10.03.2023.



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5.The learned counsel for the petitioner submitted that the judgment of the Court below is contrary to law, weight of evidence and probabilities of the case. He further submitted that there are arguable points in the criminal appeal and the petitioner has every chance to succeed in this Criminal Appeal and hence, prayed for suspension of sentence.

6.The learned Additional Public Prosecutor appearing for the respondent Police strongly objected to suspend the sentence and grant bail to the petitioner.

7.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the impugned judgment and the materials on record.



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8.On perusal of the records and the impugned judgment, it reveals that the case of the prosecution is that there is a dispute between the defacto complainant and the accused with regard to drawing of water in a common tap situated near the house of the informant. On 14.02.2013 at about 05.00pm, while drawing the water in the common tap, again a quarrel arose between the accused and the defacto complainant, due to which, the accused assaulted the defacto complainant with hands and pushed her and in consequence, she fell down and died. Hence, the accused was prosecuted. In these circumstances, the trial Court found not guilty of the petitioner for the offence under Section 302 I.P.C and found guilty for the offence under Section 304 II I.P.C and convicted the petitioner and imposed sentence.

9.Taking into consideration of the above submission of the



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learned counsel appearing on both sides, this Court finds that the petitioner has substantial grounds in this Criminal Appeal, which require detailed appraisal. In the absence of any intention to kill the deceased and there is arguable point in favour of the petitioner as stated by the learned counsel for the petitioner, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

10. Accordingly, it is ordered as follows.

(i) The substantive sentence of imprisonment alone is suspended and 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 II Additional District and Sessions Judge, Salem.*

(ii) The petitioner and his sureties shall affix their photographs



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and Left Thumb Impression in the surety bond and the concerned Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iii) The petitioner shall appear before the Trial Court as and when required.

18.04.2023
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To

1. The II Additional District and Sessions Judge, Salem
2. The Superintendent, Central Prison, Coimbatore
3. The Public Prosecutor, High Court of Madras, Chennai.
4. The Inspector of Police, Mecheri Police Station, Salem District,



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V.SIVAGNANAM, J.,

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