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*Crl.M.P.No.9487 of 2023
in Crl.A.No.585 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**Crl.M.P.No.9487 of 2023
in Criminal Appeal No.585 of 2019**

R.Azhagesan

.... Petitioner

Vs

The State rep. by
The Inspector of Police
Belukurichi Police Station,
Namakkal District.
[Crime No.63 of 2014]

.... Respondent

Prayer : Petition under Section 389(1) of Cr.P.C., to suspend the sentence imposed in Sessions Case No.20 of 2015 dated 22.11.2018 by the learned Principal Sessions Judge, Namakkal and enlarge the petitioner on bail pending Criminal Appeal.

For Petitioner : Mr.P.Rathanavel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

ORDER



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(Order of the Court was made by **R.SURESH KUMAR, J.**)

This petition has been filed to suspend the sentence imposed in Sessions Case No.20 of 2015 dated 22.11.2018 by the learned Principal Sessions Judge, Namakkal and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent.

3.There were three accused in the case. A2 and A3 were acquitted by the Trial Court and the petitioner herein is A1. Though 14 witnesses were examined on the side of the prosecution and 42 exhibits were marked and even it was a case of the prosecution that on the basis of the eye witnesses i.e., P.W.1, P.W.2, P.W.3 and P.W.5 that the petitioner/A1 caused the stab injury to the deceased, with the result he died immediately, insofar as the said occurrence is concerned, it seems that there had been a quarrel between the petitioner/A1 and the deceased on 15.05.2023 at 6.00 p.m. and in this



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context, it is to be noted that the petitioner/A1 sustained some small injury which according to him caused by the deceased, therefore he rushed to the Police Station at about 7.30 p.m. and had given a complaint to the respondent police immediately at about 8.00 p.m, the respondent police issued the medical memo for the purpose of sending the petitioner/A1 along with Sub-Inspector of Police to the hospital to take treatment at Rasipuram and thereafter that was registered as FIR at 22.30 hours.

4.Whereas, insofar as the present occurrence of murder is concerned based on the complaint given by P.W.1/wife of the deceased, FIR has been registered by the respondent police at about 10.00 p.m., at what time P.W.1/complainant come to the Police Station and gave a complaint which was reduced to FIR at 10.00 p.m. has not been stated.

5.Moreover, P.W.1, P.W.2 and P.W.3 are blood relations of the deceased, P.W.4 being an independent witness has turned hostile, P.W.5 and P.W.6 are also relatives of the deceased.

6.Therefore, the veracity of the evidence recorded by these witnesses



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have to be gone into only at the time of final hearing. But, however this Court has to take note of the fact that there has been a case and counter case where FIR has been registered on the complaint given by A1, though subsequently it has been, on investigation referred as mistake of fact and it is also to be noted that some of the witnesses who were examined by the respondent police in the said case pursuant to the FIR registered on the petitioner/A1 complaint are also the witnesses of the present case. These are the area which are to be gone into by this Court during the final hearing, for which it will take some reasonable time.

7. Therefore, under these circumstances taking note of the fact that the petitioner has been in incarceration for the past 4½ years, we feel that at this juncture the sentence recorded by the Trial Court can be suspended for the present. Accordingly, the substantive sentence imposed against the petitioner is suspended subject to the following conditions.

- (a) 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 like sum to the satisfaction of



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the learned Principal Sessions Judge, Namakkal;

- (b) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar Card or Bank Pass Book and mobile number to ensure their entity; and
- (c) The petitioner shall appear before the learned Principal Sessions Judge, Namakkal on the first working day of every month at 10.30 A.M., until the disposal of this 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 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.

3. This Criminal Miscellaneous Petition is disposed of accordingly.

(R.S.K.,J.) (K.B.,J.,)
13.07.2023

cse

R.SURESH KUMAR, J.
AND



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K.KUMARESH BABU, J.

cse

To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Inspector of Police
Belukurichi Police Station, Namakkal District.
- 3.The Superintendent, Central Prison,
Salem .
- 4.The Public Prosecutor,
High Court, Madras.

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