



Crl.M.P.No.10713 of 2023
in Crl.A.No.618 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

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

Crl.M.P.No.10713 of 2023
in
Crl.A.No.618 of 2021

Daya @ Dayanidhi

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
D-1 Triplicane Police Station,
Chennai – 2.

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed on the petitioner by the learned XVIII Additional Sessions Judge at Chennai in S.C. No.398 of 2016 on 08.03.2018 and enlarge him on bail pending disposal of the appeal.

For Petitioner : Mr.F.Wellington

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the XVIII Additional Sessions Judge, City Civil Court, Chennai in S.C. No.398 of 2016 dated 08.03.2018, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. The learned XVIII Additional Sessions Judge, City Civil Court, Chennai in S.C. No.398 of 2016, has convicted and sentenced the petitioner/A2 as follows:

<i>Offence for which Convicted</i>	<i>Sentence</i>
302 IPC	Life imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment

3. Challenging the above conviction and sentence, the petitioner/A2, has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present miscellaneous petition.



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4.The case of the prosecution is that the defacto complainant who is the brother of the deceased was walking through Gandhi Nagar D Block 7th Street in front of the house of one Aruppulakshmi; that the petitioner along with two juvenile accused by names Rakesh and Velu picked up a quarrel with him and assaulted him; that the deceased, the younger brother of P.W.1 who came to know of the incident questioned the accused; that A1 and A3 assaulted P.W.1 on his head and all over the body with a blade; that the two juvenile accused stabbed the deceased on his throat; that the petitioner stabbed the deceased on his left hand; that as a result of severe bleeding, the deceased died on his way to hospital; that a complaint was lodged on 16.03.2016; that the final report was filed only against the petitioner/A2 as the other two accused were juveniles.

5. Learned counsel for the petitioner pointed out that there is a delay of ten hours in registering the F.I.R. after the occurrence. He has also stated that the deceased was assaulted only by A1 and A3 and fatal injuries were inflicted on the deceased only by the juvenile accused and the allegation against the petitioner is that he stabbed



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and caused injury on the left hand of the deceased; that from the medical report, it is seen that the fatal injury is only caused by A1 and A3 who were juveniles and they were tried independently. This Court is of the view that the conviction against the petitioner may not be sustained.

6. Considering the overt act attributed against the petitioner and considering the fact that the petitioner is in incarceration for five years and eight months, this Court is inclined to suspend the sentence against the petitioner.

7. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of imprisonment imposed on the petitioner is **suspended** and he is granted bail on the following conditions:

- (i) Petitioner shall execute a bond for a sum of Rs.25,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned XVIII Additional Sessions Judge, City Civil Court, Chennai.
- (ii) 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



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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.

Post the appeal for final hearing in the first week of December,

2023.

(S.S.S.R., J.) (S.M., J.)
07.11.2023

Index : Yes / No
Neutral Citation: Yes/No
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To

- 1.The XVIII Additional Sessions Judge,
City Civil Court, Chennai.
- 2.The Inspector of Police,
D-1 Triplicane Police Station,
Chennai – 2.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.

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4.The Public Prosecutor,
High Court, Madras.

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and
SUNDER MOHAN, J.

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