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Crl.MP.No.11468/2023 in Crl.A.No.660/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.11468/2023 in
Crl.A.No.660/2021

Mohan

...Petitioner/Appellant/A1

Versus

State Represented by
The Inspector of Police,
Mayiladudhurai Police Station,
Mayiladuthurai District.

Crime No. 426 of 2015. ...Respondent/Respondent/Complainant

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence of imprisonment imposed on the petitioner by Judgment dated 25.11.2021 made in S.C.No.4 of 2016 on the file of the Learned District and Sessions Judge Nagapattinam and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : M/s.Swamisubramanian



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For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.S.SUNDAR, J]

- (1) This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by Judgment and order dated 25.11.2021 passed in S.C.No.4/2016 on the file of the learned District and Sessions Judge, Nagapattinam, and to enlarge the petitioner on bail pending disposal of the appeal.
- (2) The petitioner, who is the first accused in the above Sessions Case, was convicted for the offence under Sections 294 (B) and 307 (two counts) of IPC and Sentenced as follows:

Sl.No.	Offence under Section	Sentence imposed
1	294 (B) of IPC	To pay a fine of Rs. 500/- in default to undergo one month SI.
2	307 (two counts) of IPC	To undergo life imprisonment for each count and also to pay a fine of Rs.5000/- each counts, in default to undergo 2 years SI for each counts.
The period of sentences imposed above are directed to run concurrently.		

- (3) Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he is seeking suspension of sentence and



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bail in the present petition.

(4) Heard the learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

(5) The case of the prosecution is that on 27.06.2015 at about 1.00pm, during night hours, the sons of the deceased including the 2nd accused attacked PW3 and other witnesses. It is also stated that A1 brought the knife from his motorcycle and stabbed the deceased with an intention to commit murder. It is the further case of the prosecution that A2 caught hold of the deceased and A1/petitioner herein caused head injury on account of which the deceased died due to external and internal bleeding.

(6) Though several grounds have been raised by the petitioner herein, the learned counsel for the petitioner submitted that the petitioner also suffered injury, which is not accounted for, during investigation; and that the petitioner is in custody from the date of conviction i.e. since 25.11.2021; that the co-accused/A2 was released on bail and therefore,



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the sentence imposed on the petitioner may be suspended.

(7) Heard the learned Additional Public Prosecutor who vehemently opposed for grant of the relief of suspension of sentence to the petitioner herein as there are specific overt acts against the petitioner herein. Further, the motive for committing the crime is also proved by the prosecution and that the prosecution has proved its case beyond reasonable doubt and hence, prayed for dismissal of the petition.

(8) From the evidence on record and the Judgment of the Trial Court, it is seen that the parents of the deceased were examined as D.W.1 and D.W.2. They had both deposed that their complaint was only against P.W.3 one Baskar and the Police had suppressed the said complaint. On the basis of the said evidence, the Trial Court had acquitted the petitioner for the offence under Section 302 IPC. The evidence further discloses that there was a scuffle and petitioner also had been injured in the occurrence and there is no explanation for the injury suffered by the petitioner. The petitioner was convicted for the offence under Section 307



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IPC (2 counts) for having attempted to cause the death of PW1 and PW2.

In the light of the above facts, the prosecution version that the petitioner is involved in the offence of Section 307 IPC is also highly doubtful.

(9) Having regard to the admitted facts and the sequence of events referred above as turned out from the evidence and the period of incarceration suffered by the petitioner since 25.11.2021 and taking into consideration the fact that the appeal is not likely to be taken up for final hearing in the near future, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to the petitioner (A1) herein.

(10) Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner (A1) is **suspended** on the following conditions:

- (i) The petitioner (A1) shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.1, Mayiladuthurai, Mayiladuthurai District.



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(ii) The petitioner and 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 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.

[SSSRJ] [SMJ]
16.10.2023

ars/dk

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To

- 1.The District and Sessions Judge,
Nagapattinam.
- 2.The Inspector of Police
Mayiladudhurai Police Station,
Mayiladuthurai District.
- 3.The Superintendent of Prisons,
Central Prison, Tiruchirapalli.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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S.S.SUNDAR, J

and

SUNDER MOHAN, J

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