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Crl.M.P.No.15990 of 2023
in Crl.A.No.1076 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

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

Crl.M.P.No.15990 of 2023
in
Crl.A.No.1076 of 2023

Kunjithabatham

... Petitioner

Vs.

The State rep. By
Inspector of Police,
Chidambaram Town Police Station,
Cuddalore District.

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed upon the petitioner by the II Additional District and Sessions Judge, Chidambaram in S.C.No.166 of 2018 dated 20.07.2023 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the II Additional District and Sessions Judge, Chidambaram in S.C.No.166 of 2018 dated 20.07.2023, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. The learned II Additional District and Sessions Judge, Chidambaram in S.C.No.166 of 2018, has convicted and sentenced the petitioner/A1 as follows:

<i>Offence for which Convicted</i>	<i>Sentence</i>
302 IPC	Life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment
294(b) IPC	Two months rigorous imprisonment
506(i) IPC	Six months rigorous imprisonment
Sentences are ordered to run concurrently	



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3. Challenging the above conviction and sentence, the petitioner, who is arrayed as A1, has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present miscellaneous petition.

4. It is the case of the prosecution that there was previous enmity between A2 and P.W.1/wife of the deceased regarding repayment of loan borrowed from women self help group; that on account of a dispute between them, there was a wordy quarrel between A2 and P.W.1/wife of the deceased on 11.09.2017; that when the deceased tried to intervene, the petitioner/A1 and A2 slapped the deceased, as a result of which, the deceased fell down and sustained head injuries. Initially, a case was registered for the offences under Sections 294(b), 323 and 506(i) IPC and on the same day, the offences were altered to one under Sections 294(b), 323, 506(i) and 307 IPC. The deceased died five days later on 17.09.2017 and subsequently the case was altered into one under Sections 294(b), 323, 506(i), 302 IPC.



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5. Learned counsel for the petitioner submitted that the occurrence took place due to sudden quarrel and the deceased was the aggressor and in order to defend themselves, the petitioner and his wife, had slapped the deceased. There was no premeditation or strong motive to cause of the death of the deceased. The act of the petitioner at best attracts an offence under Section 323 IPC and prayed for suspension of sentence.

6. Learned Additional Public Prosecutor per contra submitted that the Trial Court after taking into consideration the evidence found that the petitioner caused the death of the deceased and convicted him for the offence under Section 302 IPC.

7. Heard the learned counsel for both sides and perused the records.

8. This Court finds that admittedly, P.Ws.1, 2 and 6, who are eye witnesses/relatives of the deceased, had all uniformly stated that pursuant to a wordy quarrel, the accused slapped the deceased and



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the deceased fainted. The deceased died five days after the occurrence. No other overt act is attributed to the petitioner. In the absence of any premeditation, we are of the view that the petitioner had no *mens rea* to cause the death of the deceased and considering the overt act attributed to the petitioner and that at best only a lesser offence would be made out, on the facts, we are inclined to suspend the sentence.

9. 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 II Additional District and Sessions Judge, Chidambaram.
- (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 numbers to ensure their identity; and



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(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.

(S.S.S.R., J.) (S.M., J.)
29.11.2023

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

- 1.The II Additional District and Sessions Judge,
Chidambaram.
- 2.The Inspector of Police,
Chidambaram Town Police Station,
Cuddalore District.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.



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