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*Crl.M.P.No.16308 of 2023
in Crl.A.No.1096 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.16308 of 2023
in
Crl.A.No.1096 of 2023

Kanagaraj

... Petitioner

Vs.

State By: The Inspector of Police,
Kundadam Police Station,
(Crime No.17/2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) & 439 of Cr.P.C to suspend the execution of sentence passed in S.C.No.17 of 2019 on the file of the Additional District and Sessions Judge, Mahila (FTC) at Tirupur and may be pleased to release the petitioner on bail pending disposal of the criminal appeal.

For Petitioner : Mr.V.Arunkumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

The petitioner who is the accused in S.C.No.17 of 2019 and convicted by the trial court for the offence under section 498A IPC and sentenced to 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default, three months rigorous imprisonment, has filed this appeal and suspension of sentence.

2. The petitioner submits that initially a case under section 174(3) of Cr.P.C registered and after detailed investigation, it was altered to offence under sections 306 & 304-B of IPC and Charge Sheet filed. The trial court framed charges under section 498-A & 304(B) of IPC.

3. The petitioner submitted that the marriage between the petitioner and his wife had taken place on 06.06.2011. At the time of marriage, 10 sovereigns of gold and other items were offered as Stridhana properties. Out of wedlock, a child was born to them, who is studying fourth standard. The petitioner and his wife were living happily. This being so, the



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petitioner's brother-in-law had sustained injuries due to an accident, for which the petitioner's wife had demanded Rs.30,000/- for his medical expense. Since the petitioner refused to pay, there was some quarrel in this regard. This being so, on 09.11.2017, the petitioner had consumed Organo Phosphorous pesticide used for agriculture. When the petitioner came to know about the same, he immediately took her in his bike to the Government Hospital, where PW7 admitted her in the casualty medical ward, the accident register/Ex.P5 recorded. During the enquiry by PW7, the petitioner's wife gave a statement that she, on her own, had consumed the pesticide poison, and the petitioner is not to be blamed for her act. He further submitted that the Revenue Divisional Officer/PW9 conducted an enquiry and given his report/Ex.P6. The trial court convicted the petitioner for the offence under section 498A IPC alone, for the other charge, he was acquitted. He further submitted that the petitioner is only taking care of his aged mother and his child, who is studying 4th standard. The petitioner's wife, due to impulsiveness, had consumed poison, for which the petitioner cannot be blamed.



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4. The learned Additional Public Prosecutor submits that on the complaint given by the mother-in-law of the petitioner, the case came to be registered and after registering the case, the case was referred to Assistant Collector/PW9 who conducted an enquiry and given his report/Ex.P6. PW6 and PW10 conducted post mortem and issued post mortem report/Ex.P2). PW12 took up further investigation, went to the scene of occurrence and drew rough sketch/Ex.P10 and prepared observation mahazar/Ex.P11 in the presence of witnesses and arrested the accused and recorded his confession statement and seized the materials (M.O.1 to M.O.6) under the cover of seizure mahazar in the presence of witness/Ex.P12). Then, he produced the seized materials before the concerned court through form-91/Ex.P13. On conclusion of investigation, PW12 filed charge sheet before the trial court.

5. Before the trial court, on the side of the prosecution, 12 witnesses examined viz., PW1 to PW12, 15 documents marked viz., Ex.P1 to Ex.P15 and 5 material objects viz., M.O.1 to M.O.5 marked. On the side of the petitioner neither any witness examined nor any document marked. The trial



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court after considering the evidence and materials on record, acquitted the petitioner for the offence under section 304-B of IPC, but convicted the petitioner for the offence under section 498-A of IPC.

6. Admittedly, Organo Phosphorous is commonly used pesticide by the agriculturists. When the petitioner came to know that his wife had consumed poison, he immediately took her to the hospital. The Casualty Doctor/PW7 recorded Accident Register, examined his wife, who informed that she consumed the said poison on her own. The Trial Court had acquitted the petitioner from major charges. There are arguable points in the appeal. It would take some time for the appeal to be taken for final hearing.

7. Considering the above fact, the petitioner is taking care of his four year old child and his aged mother. Hence, this court is inclined to grant bail to the petitioner.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the



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petitioner is ordered to be enlarged on bail, on condition that he 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 learned Additional District & Sessions Judge, FTC-Mahila at Tirupur.

9. Further, the petitioners shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the Trial Court on that day, they 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.

10. Accordingly, this Miscellaneous Petition is ordered.

20.10.2023

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To

1. The Additional District and Sessions Judge, Mahila (FTC) at Tirupur



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2. The Public Prosecutor,
High Court, Madras.

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M. NIRMAL KUMAR, J.

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