

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16487 of 2023
in
Crl.A.No.903 of 2023

Senthilkumar
S/o.Thangavel

... Petitioner/A-2

Vs.

State rep. by
The Inspector of Police,
F-1, Chindatripet Police Station,
Chennai District.
Crime No.295 of 2019.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed in S.C.No.121 of 2021 dated 24.07.2023 on the file of the learned I Additional Sessions Judge, City Civil Court, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.V.Gopinath, Senior Counsel
for Mr.N.Arun Kumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/A2, seeking suspension of sentence of imprisonment imposed by the learned I Additional Sessions Judge, Chennai by judgment dated 24.07.2023 made in S.C.No.121 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner/A2 in S.C.No.121 of 2021 was convicted by the trial Court by judgment dated 24.07.2023 for offences under Sections 307 and 506(ii) of IPC and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.30,000/- for offence under Section 307 IPC and three years rigorous imprisonment and to pay a fine of Rs.5,000/- for offence under Section 506(ii) IPC. Against which, the petitioner/A2 has filed Crl.A.No.903 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. Before the trial Court, on the side of prosecution PW1 to PW13 examined and marked Exs.P1 to 25 and marked material objects M.O.1 to

M.O.5. On the side of the defence no witnesses examined and no documents marked. On conclusion of the trial, the trial Court convicted the petitioner as stated above.

4. Learned Senior Counsel appearing for the petitioner submitted that the petitioner along with yet another Senthilkumar, Partner of PW1, was tried for offence under Section 109 r/w 307 of IPC but the trial Court found A1 not guilty and acquitted him. He further submitted that the motive attributed is the dispute between A1 and PW1. Initially, the hotel business in the name of Venkateswara Hotel was started by PW1 and A1's father in the year 2012. At that time PW1 was looking after the outside purchase work and A1 was entrusted for looking after the business in the hotel. In the year 2018, when the accounts were verified it was found that there was misappropriation of Rs.4 lakhs to Rs.5 lakhs. Thereafter, in the year 2019, the hotel was renovated and opened. At that time it was decided that PW1 to look after the management of the hotel and A1 look after the outside purchase works. Further, the relatives of A1, who were employed in the hotel, were removed. A1 got agitated over the same. Further at the instigation of A1, A2 said to have attacked PW1 on 29.06.2019 at about 11.00 p.m., when he was

standing outside the hotel. The primary accused/A1 was acquitted in this case. In such circumstances, there is no motive for the petitioner to attack PW1. He further submitted that in this case though PW1 admits in his evidence that he was speaking with three others at the time of attack, other than PW1 no other witnesses examined to speak about the occurrence proper. He further submits that PW1, after getting injured, was rushed to hospital by PW7, his brother-in-law in Auto initially to the Government Rajiv Gandhi Hospital, Chennai, where PW9 and PW11/Casualty Doctors treated him.

4.1. PW11/Casualty Doctor, who issued Accident Register records that the injury is on the right forehead, right forearm, left shoulder and left index finger. Thereafter, the same has been recorded in Accident Register/Ex.P13. PW9 other Casualty Doctor states about PW1 taking treatment in Government Rajiv Gandhi hospital. Thereafter, on the request of his relatives, PW1 was shifted to Cauveri Hospital, Chennai for treatment. He further submits that PW1 states that while sitting in his motor bike, A2 attacked him from his back with Aruval/MO1. PW11/Casualty Doctor states that the injury found is on the forehead and not on the rear side, then as projected by the prosecution, the attack should have been from the front side and not from the

back side. It has been suggested to PW1, due to mass termination of employees there was some dispute with the employees, which might be the reason for his attack and not the petitioner.

4.2. He further submits that PW10/Cauveri Hospital Doctor stated in his evidence that PW1 was examined and taken CT scan and found that there was oozing of blood in his head, hence referred to Neuro Surgeon. But no scan report produced. The Trial Court heavily relied upon the evidence of PW10 and convicted the petitioner. The evidence of PW9, PW10 and PW11 is that PW1 was attacked with knife but the investigating officer has produced MO1/Aruval and not the knife. The injuries recorded therein is lacerated injuries, which is now given different interpretation as though it was cut and open injuries. He further submitted that in this case, attack is said to have been taken place on 29.06.2019 at about 11.00 p.m. and the complaint was registered on 30.06.2019 at about 1.45 hours and the FIR reached the Court with a delay at 7.45 p.m. on 30.06.2019. The reason for delay has not been properly explained. There was some dispute between A1 and PW1 with regard to hotel business and finding that A2 being friendly with A1 has been falsely implicated in this case. He further submitted that in any event offence

under Section 307 is not made out on the evidence of PW1, which is not in consonance with the medical evidence. Further, the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

5. Learned Additional Public Prosecutor submits that in this case PW1 is the injured witness, who clearly stated about the petitioner using Aruval and attacking him on his head, shoulder, finger and other parts of the body. Thereafter, PW7 took PW1 to Government Rajiv Gandhi Hospital, Chennai, where PW9 and PW11 examined him and recorded Accident Register/Ex.P13. Thereafter, PW1 for further treatment got admitted in Cauveri Hospital, which was spoken to by PW10/Cauveri Hospital Doctor, who admitted PW1 as inpatient and gave treatment for several days. The injuries sustained have been clearly spoken by PW10. The ocular evidence and medical evidence corroborated the attack made by the petitioner. The injury has been sustained by using the weapon Aruval/MO1. Though it was not produced before the Doctors to confirm the nature of injury, that does not cut the root of the case. The delay in sending FIR is only for the reason that the investigating officer immediately rushed to the scene of occurrence,

commenced investigation and he was more concerned with regard to any further clash and also to record the statement of Doctors and about the treatments given to PW1. The discrepancies in naming MO1 are minor in nature. Hence, prays for dismissal of the petition.

6. Considering the submissions made and on perusal of the material, it is seen that the alleged attack is said to have been taken place on 29.06.2019 at about 11.00 p.m. and the complaint was registered on 30.06.2019 at about 1.45 hours and the FIR reached the Court with a delay at 7.45 p.m. on 30.06.2019 along with the remand of accused. No reason has been given by PW13/Investigating Officer in this regard. Further, PW10/Casualty Doctor recorded in Accident Register/Ex.P13 that injury sustained on the right side of the forehead. But PW1's evidence is that he was attacked from his behind, which causes serious doubt in the manner in which the attack has been carried out. Further, there was already a dispute between PW1 and A1, who was acquitted from the case. In this case, the motive has not been proved and the manner of attack is also doubtful. Further, the identification of the weapon is also disputed. Hence, the conviction of the petitioner/A2 needs reconsideration. Further taking note of the fact that there are arguable points

involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner/A2.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner/A2 is suspended till the disposal of the appeal and the 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 I Additional Sessions Judge, City Civil Court, Chennai.

8. Further, the petitioner 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 he is not able to appear before the Trial Court on that 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.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.

07.11.2023

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Note: Issue order copy on 08.11.2023

To

- 1.The Inspector of Police,
F-1, Chindatripet Police Station,
Chennai District.
- 2.The I Additional Sessions Judge,
City Civil Court, Chennai.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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M. NIRMAL KUMAR, J.

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