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*Crl.M.P.No.16967 of 2023
in Crl.A.No.1025 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM:

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

Crl.M.P.No.16967 of 2023
in
Crl.A.No.1025 of 2023

Sadaq Valli

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Neelangarai Police Station,
Chennai.
(Cr.No.2631/2011)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed on the petitioner in S.C.No.31/2013 dated 07.09.2023 on the file of learned Mahila Court, Chengalpet and release him on bail pending disposal of the Criminal Appeal No.1025/2023 with such terms or conditions that may be imposed by this Court.

For Petitioner : Mr.V.R.Balasubramaniam

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Mahila Court, Chengalpet by judgment dated 07.09.2023 made in S.C.No.31 of 2013 and enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner/A1 in S.C.No.31 of 2013 was convicted by the trial Court for offences under Sections 304-B and 498-A of I.P.C. and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- for offence under Section 304-B IPC and three years rigorous imprisonment and to pay a fine of Rs.5,000/- for offence under Section 498-A of IPC. Against which, the petitioner/accused has filed Crl.A.No.1025 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. Initially the case was registered against four persons and charge filed against A1 to A4. A1 is the husband of the deceased Safura Begum. A2 and A3 are the father and mother of A1 and A4 is the sister of A1.



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4. The case of the prosecution is that on 29.12.2011 at about 2.00 p.m. the brother of the deceased Nishar Ahamed lodged a complaint before the respondent police complaining that his sister Safura Begum aged about 26 years had married to the petitioner on 29.04.2011. At the time of marriage, 20 sovereigns of gold jewels, cash of Rs.8,00,000/- were given to the accused as Sreethana. After the marriage, the accused harassed and demanded more gold and a house from the deceased as dowry. This demand was consistent and she was put under harassment and subjected to cruelty. Due to the mental agony, she set herself on fire on 28.12.2011 at about 3.30 p.m. Thereafter she was taken to Malar hospital by the house owner/PW6 and the Doctors therein advised him to take the victim to Kilpauk Medical College and Hospital. Thereafter, she was admitted in Kilpauk Medical College and Hospital. PW8/Casualty Doctor, who admitted the de-facto complainant's sister and issued accident register/Ex.P4 states that de-facto complainant's sister admitted as inpatient and she died on 29.12.2011 at 9.45 a.m. Thereafter, a complaint was lodged and a case in Crime No.2635 of 2011 was initially registered under Section 174(3) Cr.P.C., subsequently, altered into Sections 304B and 498-A of IPC. Since the death occurred



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within seven years of the marriage, the case was referred to Revenue Divisional Officer/PW7. PW7 conducted inquest and issued report/Ex.P3. Thereafter, one Umashankar took up investigation, collected articles as listed in the scene of occurrence, prepared observation mahazar, sent the body for postmortem, arrested the accused. After recording the statement of witnesses and collecting report from the Doctor, charge sheet filed before the trial Court.

5. Before the trial Court on the side of prosecution PW1 to PW11 examined and marked Exs.P1 to P12 and marked material objects as M.O.1 and M.O.2. On the side of defence one witness DW1 examined and no documents marked.

6. The contention of the petitioner is that the marriage between the petitioner and the deceased Safura Begum took place on 28.04.2011 and they lived only for a short period. On 28.12.2011 at about 3.30 p.m. she committed self immolation and set herself on fire. Immediately, PW6/house owner took her in Auto to the Malar hospital. While proceeding in the auto, the deceased spoke to her mother PW2. But PW2 not stated anything in this



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regard. In the Malar hospital, Doctor advised PW6 to take the deceased to Kilpauk Medical College and Hospital. PW6 took the deceased in the Ambulance. On the way, he informed the petitioner herein about the incident, who immediately rushed to the Kilpauk Medical College and Hospital, received the Ambulance. On seeing his wife with burn injuries both of them hugged and cried which was spoken to by PW6, which confirms that there was a cordial relationship between the petitioner and the deceased. The reason for his wife committing self immolation may be for some other reason. PW2, the mother of the deceased in her evidence states that on 23.12.2011 the deceased came to Hyderabad and she was there for three days. On 26.12.2011 she left Hyderabad and reached Chennai on 27.12.2011. On the next day on 28.12.2011 she committed self immolation. Though PW2 gave a reason that during the stay of her daughter between 23.12.2011 to 26.12.2011 in Hyderabad, she informed about demand of dowry of Rs.30,00,000/- for purchase of plot and house by the petitioner and his family. But this fact has not been stated to PW7/RDO and it is only an after thought contradiction.



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6.1. He further submitted that PW8-Casualty Doctor, in the Accident Register/Ex.P4 recorded that it is the first petitioner who admitted the deceased in the hospital and the deceased was conscious and she was able to speak. The evidence of PW6/house owner, PW7/RDO, PW8/casualty Doctor, have cut the root of the prosecution case and confirmed that there was no demand of dowry or harassment and the petitioner is not the reason for the deceased to take extreme step of self immolation. PW1 and PW2/brother and mother of the deceased though initially not stated anything to the RDO but subsequently gave exaggerated version in the evidence. The trial Court swayed away on this evidence and convicted the first petitioner. In this case, apart from the first petitioner, other accused are acquitted. He further submitted that though the respondent police were aware that there has been telephonic conversation between the deceased and his mother/PW2 and these call details were not collected to show that there was constant harassment or demand of dowry, which fact the trial Court failed to consider. From the evidence it is seen that there is no demand of dowry or harassment, which was fortified by the evidence of PW7 and his report/Ex.P3. Learned counsel further submitted that DW1/Nareish friend of the first petitioner examined to prove that immediately after getting the information about his wife



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committing self immolation, the petitioner rushed to the Kilpauk Medical College and Hospital to receive his wife. Had the petitioner being the reason for it, he would have fled and not rushed to the hospital to provide medical aid to his wife. 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.

7. Learned Additional Public Prosecutor objected to the bail by submitting that on the complaint of PW1/brother of deceased, a case in Crime No.2635 of 2011 under Sections 304B and 498-A of IPC. registered on 29.12.2011. In this case, the marriage between the petitioner and the deceased took place on 28.04.2011. Within eight months of the marriage, the deceased committed self immolation due to the demand of dowry and harassment subjected to her. Since the death occurred within eight months after the marriage, the case was referred to RDO/PW7. RDO conducted inquest, gave his report Ex.P3. In his report, it is stated that once there is no demand of dowry, there is no question of proceedings against the petitioner for offences under Sections 304B and 498-A of IPC. PW1, PW2 and PW3, the brother, mother and relative of the deceased have clearly narrated about



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the constant demand of dowry, harassment and cruelty, which the deceased was subjected to. PW2 states that from 23.12.2011 to 26.12.2011, when her daughter was in Hyderabad, she informed about the demand of dowry and harassment. It is corroborated by the evidence of PW1 as well as PW3. The deceased reached Chennai only on 27.12.2011. On the next day, on 28.12.2011 she committed self immolation. Later she died on 29.12.2011. For this the accused has to give explanation and no explanation has been forthcoming. The trial Court on the evidence of PW1 to PW3 found that the petitioner is the reason for the deceased to commit self immolation, which was confirmed by the evidence PW6, PW8 and PW9. In this case, PW10 is Sub Inspector of Police, who registered the F.I.R. PW11 is the alternate Investigating Officer, who stated about the investigation conducted and filing of the charge sheet, since the original Investigating officer, Umashankar passed away. Further submitted that the trial Court on the evidence and materials produced, had rightly convicted the petitioner and hence, prays for dismissal of the petition.

8. Considering the submissions made and on perusal of the material it is seen that in this case, RDO examined as PW7, who gave his report/Ex.P3.



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In his report he clearly stated that there is no demand of dowry. Once such report is given, the evidence of PW1 to PW3 has to be considered with pinch of salt. In this case, PW2 though states that she had been in constant touch with his daughter and spoken with her daughter on the date of occurrence, the investigating officer has not taken any steps to collect the call details to confirm the dowry allegation. It is seen that in this case, the deceased gone to her parents house and she was there in Hyderabad from 23.12.2011 to 26.12.2011. She reached Chennai only on 27.12.2011. What transpired in her parents house and what is the reason for her to take such extreme step is unknown. It is to be seen that in this case PW6 confirms that the deceased spoke with her mother/PW2 while they were travelling in Auto. PW6 further states that she informed the petitioner about the incident and the petitioner came to KMC hospital to receive his wife and for providing medical aid. PW8 issued accident register/Ex.P4. In the register, he recorded that petitioner admitted the deceased for treatment. PW6 further confirms that on seeing his wife, the petitioner and the deceased/wife hugged each other and cried. DW1 friend of petitioner deposed about the petitioner rushing to the hospital to provide medical aid to his wife and also the petitioner being taken in custody by the police. Further taking note of the fact that there are



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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.

9. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner 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 Sessions Judge, Mahila Court, Chengalpet.

10. 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.



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11. Accordingly, this Miscellaneous Petition is ordered.

20.10.2023

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To

- 1.The Inspector of Police,
Neelangarai Police Station,
Chennai.
- 2.The Sessions Judge,
Mahila Court, Chengalpet.
- 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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