



Crl.M.P.No.16799 of 2023 in Crl.A.No.764 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16799 of 2023
in Crl.A.No.764 of 2023

Ajaykumar,
S/o.Baskaran

... Petitioner

Vs.

State by:
Inspector of Police,
Traffic Investigation,
Pondy Bazar Police Station,
Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence passed by the learned V Additional Sessions Judge, Chennai, and made in S.C.No.248 of 2015 by judgment, dated 03.07.2023 and enlarge the petitioner on bail till the disposal of the above mentioned Criminal Appeal No.764 of 2023.

For Petitioner : Mr.Ganesh Rajan
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment passed in S.C.No.248 of 2015 by the learned V



Additional Sessions Judge, Chennai (trial Court) whereby the petitioner was convicted and sentenced to pay a fine amount of Rs.1,000/-, in default, to undergo three months Simple Imprisonment for offence under Section 279 of IPC. For offence under Section 304(ii) of IPC, the petitioner is sentenced to undergo seven years Rigorous Imprisonment and to pay a fine amount of Rs.10,000/-, in default, to undergo six months Simple Imprisonment. For offence under Section 185 of the Motor Vehicles Act, the petitioner to sentenced to pay a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment.

2.The case of the prosecution is that on 07.10.2014, the petitioner, who was driving the Tata Sumo car bearing Registration No.TN 01 AD 0384 in a drunken state in a rash and negligent manner endangering the public along 100 feet Road, Vadapalani from North to South direction, at about 21.15 hours, dashed against one Muthukaruppan (deceased), who was standing on the platform in front of Akash Fertility Hospital. On the same road, due to which, the deceased sustained grievous head injury and died on the spot. In continuation of causing the death of the deceased, the Tata



Sumo car driven by the accused, dashed against a vehicle bearing Reg. No.TN-02-AR-1455 parked at the same place and caused damages to the said vehicle. Thus the petitioner has committed the offence punishable under Sections 279, 304(ii) of IPC and 185 of Motor Vehicles Act. On conclusion of investigation, charge sheet filed before trial Court.

3.During trial, 11 witnesses examined as PW1 to PW11 and 10 documents marked as Exs.P1 to P10. On the side of the defence, no witness examined and no document marked. The trial Court on conclusion of trial, passed the judgment of conviction against the petitioner as stated above.

4.The contention of the learned counsel for the petitioner is that in this case, the prosecution proceeded on the ground that the petitioner in a drunken state, driven the Tata Sumo vehicle bearing registration No.TN 01 AD 0384 in a rash and negligent manner, ran over Muthukaruppan, who died on the spot. The petitioner caught on the spot and produced before the Doctor (PW3), who recorded that in Ex.P1 that there was smell of alcohol, but the petitioner refused to give urine and blood samples for testing, further



he was speaking and walking properly and he was not intoxicated but under the influence of alcohol. Ex.P1 is drunkenness certificate issued by the Doctor (PW3). He further submitted that the Accident Register issued by the Doctor (PW3) is dated 07.10.2014 at 11.15 hours, on the other hand, the case itself came to be registered on 08.10.2014 at about 00.30 hours, but the crime number finds place in the Accident Register Copy (Ex.P6) which itself shows the genesis of the case itself is highly doubtful. He further submitted that the petitioner was sitting as a passenger in the rear side of the car, the owner and driver of the car was one Murugan, who had driven the car. After the accident, he slipped down from the car. Though his statement recorded under Section 161 Cr.P.C., due to his death he could not be examined as witness. This fact has been confronted to the Investigating Officer (PW11) who though denies that he is the driver of the car, with regard to the other aspect he admits the same.

5.The learned counsel further submitted that the entire case revolves around the evidence of the Doctor (PW3) and Ex.P1. The petitioner consumed alcohol and found in drunken state, but not proved in the manner



known to law. No urine and blood samples taken immediately after the occurrence. It is also seen that the petitioner was produced before the Doctor (PW3) by one Balasubramaniam, the Sub Inspector of Police attached to the respondent Police. He further referring to Ex.P1 submitted that interpolation has been made in Ex.P1 as though '*the blood sample not taken, not willing*'. The trial Court without considering these aspects, held that the petitioner was in a drunken state and convicted him. Hence, he prayed for Suspension of Sentence and bail.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner in a drunken state driven the said car in a rash and negligent manner in the public road, dashed against passers-by and caused the accident. Due to such rashness, the victim died on the spot. The petitioner caught by the public and he was taken to the Doctor (PW3) who recorded that the petitioner was smelling with alcohol and he refused to give urine and blood samples for testing. To deny the same, the Doctor (PW3) was not cross examined. In such circumstances, the petitioner's submission that the prosecution not proved the case with



regard to the petitioner was found in drunken state at the time of occurrence, is not sustainable. He further submitted that in this case, PW1, PW2, and PW4 are the eye witnesses, who were present in the scene of occurrence, who clearly deposed the manner in which the petitioner driven the vehicle and caused the accident. PW8, the Regional Transport Officer gave report that the accident is not due to any mechanical defects. Thus, the trial Court on considering all these aspects, rightly convicted the petitioner. Hence, he opposed this petition.

7.Considering the submissions and on perusal of the materials, it is seen that in this case, PW3 is the Doctor before whom the petitioner was immediately taken after the accident. Though he stated that there is smell of alcohol on the petitioner, no percentage of alcohol found in the breath recorded and no urine or blood samples taken. Though it has been recorded that the petitioner was not willing to give samples as per Ex.P1, there is an interpolation in it, for which, no explanation given by PW3. The breath analyser is an handy equipment, which is always available with the traffic Police, through which, the percentage of alcohol in the breath can be



analysed. In this case, no such procedure done. In view of the above, this Court finds the conviction of the petitioner needs reconsideration. The petitioner has made a case for appeal.

8. 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 trial Court.

9. The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., till 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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M. NIRMAL KUMAR., J.

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10. Accordingly, this Criminal Miscellaneous Petition is ordered.

07.11.2023

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To

1. The V Additional Sessions Court,
Chennai.
2. The Inspector of Police,
Traffic Investigation,
Pondy Bazar Police Station,
Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.

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