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*Crl.M.P.No.17351 of 2023
in Crl.R.C.No.1839 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

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

Crl.M.P.No.17351 of 2023
in
Crl.R.C.No.1839 of 2023

Swaminathan

... Petitioner/Accused

Vs.

State rep by
The Inspector of Police,
Kangayam Police Station,
Kangayam, Erode – 638 701.
(Crime No.322/2014)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) r/w 389(1) of Criminal Procedure Code to suspend the sentence made in Criminal Appeal No.26 of 2017 dated 17.08.2023 on the file of the III Additional District and Sessions Judge in confirming the judgment made in S.C.No.36 of 2015 dated 21.02.2017 on the file of the Assistant Sessions Judge and enlarge the petitioner on the file of this Court.

For Petitioner : Mr.K.P.Anantha Krishna and
Mr.K.Jayavarthini

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Assistant Sessions Judge, Dharapuram by judgment dated 21.02.2017 made in S.C.No.36 of 2015 and confirmed by the learned III Additional District and Sessions Judge in C.A.No.26 of 2017 dated 17.08.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2. The petitioner/accused in S.C.No.36 of 2015 was convicted by the Trial Court by judgment dated 21.02.2017 for offences under Sections 307 and 427 of IPC and sentenced to undergo four years rigorous imprisonment and to pay a fine of Rs.1,000/- for offence under Section 307 IPC and three months rigorous imprisonment and to pay a fine of Rs.500/- for offence under Section 427 IPC. Aggrieved against the same, the petitioner preferred an appeal before the III Additional District and Sessions Judge, Dharapuram in C.A.No.26 of 2017. The learned Sessions Judge, by judgment dated 17.08.2023 dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the petitioner/accused has filed Crl.R.C.No.1839 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.The contention of learned counsel for the petitioner, Ms.Jayavarthini is



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that the petitioner falsely implicated in this case. The petitioner's brother's daughter and de-facto complainant's son got married and there was some misunderstanding between the family members, later the de-facto complainant's son and petitioner's brother's daughter got separated. The de-facto complainant assumed that petitioner is the cause for their separation. On 08.07.2014 at about 11.00 p.m. after attending a marriage, when the de-facto complainant was riding his two wheeler TVS 50 Moped, the petitioner/accused with the intention of committing murder drove his car and dashed the de-facto complainant's two wheeler. Due to the accident, the de-facto complainant sustained injury and initially got admitted in the Government Hospital thereafter took treatment in a private hospital. PW9/Doctor, who gave treatment in the Government Hospital, recorded in the Accident Register that it is a case of Road Travel Accidence and the injuries are simple in nature.

3.1.The learned counsel for the petitioner further submitted that the Lower Court primarily proceeded and convicted the petitioner on the evidence of PW1, PW2 and PW3. PW2 and PW3 are none other than the close relatives of PW1, who claim to have followed PW1, other than that there are no other witnesses. According to the prosecution, the occurrence took place in the public,



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but no public witnesses examined. He further submitted that in this case, the alleged occurrence took place on 08.07.2014 but the complaint lodged only on 12.07.2014. PW12/Investigating Officer admits that information about the accident reached the police on 09.07.2014, thereafter they went to the hospital and the de-facto complainant was not available. PW10 is the Doctor of a private nursing home, who treated PW1 subsequently but not produced any documents to prove PW1 took treatment as inpatient for the period from 08.07.2014 to 12.07.2014. Further submitted that the damage is on the right mirror of the TVS 50 Moped of the PW1. Hence, the manner in which the petitioner caused accident itself is doubtful. Had the petitioner caused accident voluntarily, it could have been from the behind and not the right side. The Trial Court as well as Lower Appellate Court not considered these aspects, on the other hand convicted the petitioner. The learned counsel for the petitioner further submitted that the petitioner is now surrendered before the Additional Sessions Judge's Court, Dharapuram, Tiruppur and is now confined in Central Prison, Coimbatore. Further submitted that the petitioner has arguable points and fair chance of success in this revision. Hence, she prays for granting suspension of sentence to the petitioner.

4.The learned Additional Public Prosecutor submits that in this case there



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was enmity between the petitioner and de-facto complainant, which is not seriously disputed. The de-facto complainant/PW1 was proceeding in his TVS 50 Moped after attending the marriage, at that time the petitioner came in his Maruti car in a rash and negligent manner causing danger to the life of the petitioner. Had PW2 and PW3 not intervened, the life of the PW1/de-facto complainant would have been in danger. The de-facto complainant took treatment in the Government Hospital, which is spoken by PW9, the further treatment confirmed by the evidence of PW10. PW11/Sub Inspector of Police registered F.I.R., PW12 and PW13/Investigating Officers narrated the sequence of events. PW4 and PW5, the son-in-law and son of PW1 confirmed that PW1 was brought home by PW2 and PW3 and PW4 took him to Government Hospital, Kangayam and then to Dhivya Hospital, Kangayam. PW7 is the witness to the seizure and recovery of Maruti car of the petitioner. PW8 is the mechanic, who assessed the damage to the two wheeler. He further submitted that before the Trial Court PW1 to PW13 examined, Exs.P1 to P9 and M.O.1 and M.O.2 marked. The Trial Court on conclusion of the trial rightly convicted the petitioner and the Lower Appellate Court finding no merits in the contention of the petitioner, dismissed the appeal. He further submitted that the petitioner surrendered before the Additional Session Judge's Court, Dharapuram and now



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he is confined in Central Prison, Coimbatore and prays for dismissal of the petition.

5.Considering the submissions made and on perusal of the material, it is seen that the points raised by the learned counsel is that there is a delay of five days in registration of the F.I.R. and in AR copy/Ex.P5 it is recorded as Road Travel Accident (RTA). Further, the nature of damage to TVS 50 vehicle causes some doubt, the version of PW2 and PW3, who are interested witnesses, cannot be accepted. Prior to the accident, there was some family dispute between the petitioner and the de-facto complainant. The injuries found are simple in nature and the threat is doubtful. PW4 and PW5 states that PW1 came home and thereafter PW1 was taken to the hospital would prove that injuries are not serious in nature. Considering the submissions of the learned counsel for the petitioner, the judgment of the Court below needs reconsideration. Further taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.



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6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision 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 III Additional District and Sessions Judge, Dharapuram.

7. Accordingly, this Criminal Miscellaneous Petition is ordered.

28.11.2023

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Note: Issue order copy on 29.11.2023.



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M. NIRMAL KUMAR, J.

rsi

To

- 1.The Inspector of Police,
Kangayam Police Station,
Kangayam, Erode – 638 701.
- 2.The III Additional District and Sessions Judge,
Dharapuram.
- 3.The Assistant Sessions Judge,
Dharapuram.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.

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