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*Crl.M.P.No.17049 of 2023
in Crl.R.C.No.1802 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.17049 of 2023
in
Crl.R.C..No.1802 of 2023

Dhakshinamoorthy

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Muthupettai Police Station,
Thiruvarur District.
(Cr.No.153/2014)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed by the learned Principal District and Sessions Judge, Thiruvarur in C.A.No.20 of 2021 by its order dated 20.09.2023 confirming the judgment passed in C.C.No.33 of 2014 on the file of the learned Judicial Magistrate Fast Track Court, Thiruthuraipoondi vide judgment dated 17.11.2021 sentenced to undergo 2 years S.I. and to pay Rs.2,000/- i/d 1 month S.I. for the offence u/s 304A of Indian Penal Code and enlarge the petitioner/appellant/accused in bail pending above criminal revision.

For Petitioner : Mr.Swamisubramanian

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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WEB COPY This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate, Fast Track Court, Thiruthuraipoondi by judgment dated 17.11.2021 made in C.C.No.33 of 2014 and confirmed by the learned Principal District and Sessions Judge, Thiruvarur in C.A.No.20 of 2021 dated 20.09.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2. The petitioner/accused in C.C.No.33 of 2014 was convicted by the trial Court for offence under Section 304-A and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.2,000/-. Aggrieved against the same, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Thiruvarur in C.A.No.20 of 2021. The learned Sessions Judge, by judgment dated 20.09.2023 dismissed the appeal confirming the conviction and sentence passed by the trial Court. Against which, the petitioner/accused has filed Crl.R.C.No.1802 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3. The case of the prosecution is that on 01.04.2014 at about 5.15 hours, one Kasinathan, father of the de-facto complainant/PW1 was travelled in his two wheeler, Hero Honda Splendor bearing registration No.TN-50-V-9826 from east to west. When he was proceeding near Uppoor New road, a bus, which was coming in the same direction behind him in a rash and negligent manner, dashed against the bike driven by Kasinathan. He fell down to his left and sustained injuries and thereafter died. This was witnessed by PW1, who is a Van driver in a School, who had driven the van behind the bus of the accused. In this case, PW7 on the complaint of PW1 registered an FIR. PW9/Investigating Officer took up investigation, recorded statement of witnesses PW1, PW2, PW3 and PW6/eyewitnesses, PW4 and PW5/Mahazar witnesses, PW8/Motor Vehicle Inspector and thereafter on collection of materials and documents filed charge sheet before the trial Court.

4. Before the trial Court, on the side of prosecution PW1 to PW9 examined, marked Exs.1 to 9 and no material objects marked. On the side of defense, no witnesses examined and no documents marked. The trial Court on the conclusion of trial convicted the petitioner as stated above. The Lower



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Appellate Court dismissed the appeal confirming the judgment and sentence passed by the trial Court, against which, the present revision.

5. The contention of the petitioner is that PW1 is the son of the deceased and he is not an eyewitness to the occurrence. Though he has been projected as eyewitness, his evidence is that he parked the school van to drop the children near Uppoor New Road and his father was proceeding before him. At that time, the bus driven by the petitioner overtook his van and caused the accident. If that is so, the bus driven by the petitioner would have completely obstructed the site of PW1 and PW1 could not have seen the accident at all. PW1 further in his evidence stated that the petitioner driven the bus in a rash and negligent manner but PW7/Sub Inspector of Police during cross examination deposed that there is no mention about rash and negligent driving of the bus. Further submits that in this case PW2 is the close relative of PW1. From the report of Motor Vehicle Inspector/PW8 it is seen that two wheeler had sustained damages to its right side. If the accident took place as spoken by the witnesses, the damages could have been only on the rear side and not on the right side. Further, PW2 admits that only after hearing the noise he turned and he has not seen the accident proper.



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5.1. The specific case of the petitioner is that the deceased contributed negligence for the accident, he had taken a sudden right turn in Uppoor Road and that is the reason for the accident. Further, deceased was riding vehicle without license. PW1 though states that his father has got license, the same has not been produced in this case. Motor Vehicle Inspector report is contrary to the evidence of eyewitnesses affirming that the eyewitnesses were not present in the scene of occurrence. The trial Court as well as lower Appellate Court failed to consider the same. Further, the petitioner has arguable points and fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioner.

6. Learned Additional Public Prosecutor opposes this bail petition by stating that PW1/Driver of the Van saw the accident. Prior to the accident, his father came and collected Rs.2,000/- from him and thereafter took the bike of PW1. While proceeding on the road, the bus driven by the petitioner came in a rash and negligent manner, over took the van driven by PW1 and dashed against the two wheeler of the deceased, who fell down and died on the spot. The petitioner slowed down the bus and thereafter escaped from the



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scene of occurrence without providing any medical aid to the deceased. The other witnesses, namely, PW2 and PW6 corroborated the evidence of PW1. The Motor Vehicle Inspector given a report that the two wheeler sustained damages. Further, the bus also sustained damages to its left side which would confirm that the accident took place due to the negligent driving of the petitioner. In this case, except witness PW4 and PW5 all the other witnesses have supported the case of the prosecution. The trial Court on the evidence of witnesses and materials produced, rightly convicted the petitioner. The Lower Appellate Court confirmed the conviction of the petitioner. Hence, prayed for dismissal of the petition.

7. Considering the submissions made and on perusal of the material it is seen that PW1, PW2, PW3 and PW6 are the eyewitnesses projected. In this case there are discrepancies in their evidence. PW1 admits that he could not produced the license of his father. The evidence of PW8/Motor Vehicle Inspector and his report/Ex.P5 is quite contrary to the evidence of the projected eyewitnesses. The two wheeler sustained damages to its right side and the bus sustained damages to its left side. Had the accident taken place as spoken by the witnesses, the damages could have been on the front side of



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the bus not on the left side. 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.

8. 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 Judicial Magistrate, Fast Track Court, Thiruthuraipoondi.

9. 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 revision 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.

rsi

10. Accordingly, this Miscellaneous Petition is ordered.

**20.10.2023
(2/2)**

rsi

To

- 1.The Inspector of Police,
Muthupettai Police Station,
Thiruvarur District.
- 2.The Judicial Magistrate,
Fast Track Court,
Thiruthuraipoondi.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Public Prosecutor,
High Court, Madras.

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