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Crl.M.P.No.18313 of 2023 in *Crl.A.No.1309 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

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

Crl.M.P.No.18313 of 2023 in
Crl.A.No.1309 of 2023

Manikandan

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
R-4, Soundrapandiyan Police Station,
Chennai.
(Crime No.200 of 2018

... Respondent

PRAYER: Criminal Revision filed under Section 389(1) of Cr.P.C to suspend the sentence imposed on the petitioner in judgment made in S.C.No.111 of 2020 dated 06.11.2023 passed by the XXI Additional City Civil Court at Allikulam, Chennai and release the petitioner on bail.

For Petitioner : Mr.B.Sridhar

For Respondent : Mr.S.Sugendran,
Additional Public Prosecutor

ORDER

This petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.111 of 2020 dated 06.11.2023 by the XXI Additional City Civil Court at Allikulam, Chennai.



2. The petitioner/A1 was tried in S.C.No.111 of 2020 along with four others for the offences under sections 147, 148, 149 and 307 IPC. On conclusion of trial, the trial court acquitted A2 to A5 from all charges and as regards this petitioner is concerned, he was found not guilty for the offence under sections 147, 148, 149 and 307 IPC. However, found the petitioner guilty under section 326 IPC and sentenced to five years R.I. and to pay a fine of Rs.10,000/- in default, to under three months S.I. Against the said conviction, the petitioner preferred this appeal and suspension of sentence.

3. The gist of the case is on 04.08.2018, the petitioner along with his friends A2 to A5 had visited the club at Habibullah Road, T.Nagar, where they had celebrated the birthday of one Vijay and at that time, one Suraj Dinesh/victim/PW2 was purchasing beer bottle in the fourth floor. The petitioner grabbed the beer bottle purchased by the said Suraj Dinesh/PW2, due to which, a wordy quarrel arose. The petitioner herein called the other accused for his support and there was a big fight at about 3.30 p.m. By one of the petitioner friends, dragged Suraj outside the party hall and through the staircase to the parking area in the ground floor. The petitioner took a



knife and the other accused ensured that the said Suraj Dinesh did not move away and the petitioner kept the knife on the victim's neck, stomach and chest and caused injuries. Thereafter, a complaint was lodged by the father of PW2/victim and the statements of PW2/Victim, PW1 and PW3 who are the father and mother of the victim recorded. Though the prosecution had projected LW4 to LW8 as eye-witnesses, LW5 and LW8 could not be examined and LW4, LW6 and LW7 were examined as PW8, PW4 and PW5 and they have stated about the attack by the petitioner. PW6 is the person who took the victim to the hospital. In the presence of LW14 and LW15, observation mahazar and rough sketch prepared and the same were marked. PW12 is the Government Doctor who had treated the victim. Thereafter, on the evidence of PW1 to PW15, Ex.P1 to Ex.P10 and M.O.1, the trial court had convicted the petitioner as stated above.

4. The contention of the petitioner is that the victim/PW2 in this case had not supported the case of the prosecution. He had not whispered anything about the petitioner. He had given an explanation that since he was over-drunk, he was unable to remember what had happened on that date.



PW4 would state that there was a fight between two persons and both were assaulting each other and he had not identify the petitioner. PW6, the other witness would state that all they were drunken in the party and nothing more. PW5, the other witness also states that there was a party and everyone consumed alcohol and there was a fight. None of the witnesses identified that the petitioner. He further submitted that in the Ex.P1/complaint, it is stated that PW1 was informed by his son PW2 that he met with an accident. Even in the accident register, EX.P4 it is mentioned that it was a road accident and the medical officer/PW12 though had noted stab injuries on the abdomen, had denied that the said injuries could have been caused by using beer bottle. It is an admitted facts that on the date of attending party and there was a scuffle in the party hall and everyone was drinking. The lower court on the evidence of PW12 and PW14 and finding stab injury using a beer bottle and contusion in lung, had convicted the petitioner which is not proper. The petitioner is now confined in Central Prison, Puzhal.

5. Learned Additional Public Prosecutor submits that in this case, the petitioner along with his friends had attended the party and everyone were



drinking. At that time, there was a fight between the petitioner and PW2.

The petitioner attempted to grab the beer bottle from PW2 and fight started.

Later PW2 was dragged down to the car parking and the other accused caught hold of PW2, the petitioner had inflicted, stabbed and cut injuries on the PW2, which is recorded in the accident register/ Ex.P4. PW12 and PW14 are the doctors who confirmed the injuries sustained by the PW2. PW2 fearing for the petitioner, not supported the case of the prosecution, but the medical evidence proved that the petitioner is the reason for the injury. The lower court considering all these aspects had convicted the petitioner for the offence under section 326 IPC and the judgment is a reasoned one. Hence, the learned Additional Public Prosecutor opposed the petition.

6. Considering the submissions and perusal of the materials, it is seen that PW2 is the victim in this case who had stated that he was drunk and drowsy and he did not know what had happened on that day. PW1 father of the victim states that his son informed that he met with an road accident and sustained injuries. PW3 is the mother of the PW2/victim state about the



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injuries sustained by her son. PW4, PW5 and PW6 though state that there was a fight between two persons, they could not identify the petitioner being the reason for the attack and injuries. The lower court had gone primarily against the petitioner on the evidence of PW12, PW14 and Ex.P4 and wound certificate. When PW2/victim himself had stated that he is not aware about what had happened and how he sustained injury, conviction of the petitioner under section 326 IPC on the medical grounds alone would not be sufficient and to be reconsidered. In view of the same, this Court is inclined to grant suspension of sentence.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision case 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 XVII Metropolitan Magistrate, Saidapet, Chennai.



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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 revision case 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.

13. Accordingly, Crl.M.P.No.18313 of 2023 is ordered.

29.11.2023

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To

- 1.The State Rep. by
The Inspector of Police,
R-4, Soundrapandiyan Police Station,
Chennai.
- 2.The XVII Metropolitan Magistrate's Court,
Saidapet, Chennai.
- 3.The Central Prison,
Puzhal-1, Chennai – 600 066.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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