



CRL.M.P.NO.1269 OF 2023
IN CRL.A.NO.97 OF 2023

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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'Criminal Miscellaneous Petition' ['Crl. M.P' for the sake of brevity] has been filed with a prayer for suspension of sentence under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity].

2.Short facts are that the petitioner was arrayed as A1 along with his wife and daughter as A2 and A3 respectively in S.C.No.232/2017 (CNR No.TNSA010009302017) on the file of learned III Additional District and Sessions Judge, Salem (FAC); that the prosecution theory is that the *defacto* complainant (P.W.1) and A1 along with their friends arranged for a tour to visit Kumbakonam and Karaikkal through their Association; that in the tour



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there was altercation regarding collection of fee from some co-tourists; that the issue also pertains to whether the co-tourists were the Members of the Association for which tour was arranged; that A1 and P.W.1 are first cousins; that this lead to an occurrence on 22.05.2015 resulting in death of son of P.W.1 on 27.05.2015 and injuries for P.W.1; that post trial in and by 'judgment of conviction and sentence dated 14.11.2022' ('impugned judgment' for the sake of convenience) as the same is assailed in the main Criminal Appeal; that after full contest, the trial court acquitted A2 and A3 (spouse and daughter respectively of A1) but as regards A1, he was convicted and sentenced for offences under Sections 307 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]; that for Section 307 of IPC offence the sentence is TEN YEARS and Rs.5,000/- fine i/d one year Simple Imprisonment and as regards Section 302 of IPC offence, it is LIFE IMPRISONMENT and Rs.5,000/- fine i/d one year Simple Imprisonment; that the petitioner remains incarcerated from 14.11.2022.



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3.In the hearing today, Mr.S.Kingston Jerold, learned counsel for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for the respondent State are before us.

4.To be noted, in the light of the first proviso to Section 389(1) of Cr.P.C., the learned Prosecutor has filed counter affidavit.

5.Learned counsel for the petitioner submitted that the petitioner also was injured, a criminal complaint vide Crime No.216 of 2015 was lodged but the same was closed as 'Mistake of Fact'. Learned counsel drew our attention to paragraph 36 of the impugned judgment in this regard. Learned counsel submitted that this by itself makes the judgment weak in the light of long line of authorities that it is incumbent upon the Investigating Officer to have prosecuted the aggressor qua A1 also. That apart, learned counsel drew our attention to the inquest report (Ex.P20) and the Doctors evidence (P.W.10, P.W.12, P.W.13 and P.W.14) submitted that the proximate cause of death has not been established and the conviction is shaky. In any case, we find that there is clearly an arguable point in the main appeal.



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6. In response to the above submission, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that the conviction is sound and all necessary facts have been cogently proved by the prosecution.

7. We carefully considered the submissions made by both sides, we are inclined to accede to the suspension of sentence prayer and the reasons are as follows:

(a) In the light of *Omprakash* principles being principles laid down by Hon'ble Supreme Court in ***OMPRAKASH SAHNI VS. JAI SHANKAR CHAUDHARY [2023 SCC ONLINE SC 551]*** we are of the *prima facie* view that the petitioner has a good chance of success in the appeal and that this *prima facie* view stems from aforementioned aspects in the earlier part of this order which does not warrant appreciation of evidence;



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(b) The injured (P.W.1) and petitioner (A1) are first cousins. They are closely related and it appears to be a case of sudden provocation;

(c) The accused has served 70 days pending investigation besides remaining incarcerated from the date of judgment i.e., from 14.11.2022;

(d) The accused is the sole breadwinner, a Mason by avocation, A2 and A3 (acquitted) have now been left to fend for themselves;

(e) If the appeal is taken up in due course, it is likely to consume time and the Hon'ble Supreme Court in ***KASHMIRA SINGH VS. THE STATE OF PUNJAB [1977 (4) SCC 291]*** has held that when appeal is likely to consume time for being heard out, the convict will be entitled to suspension of sentence;



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(f) Be that as it may, we will also be imposing conditions which shall be adumbrated elsewhere in this order and we are of the view that the conditions will adequately balance the situation.

8. In the light of the narrative discussions and dispositive reasoning set out supra, the following order is made:

(i) the sentence of the trial court i.e., sentence dated 14.11.2022 in S.C.No.232 of 2017 (CNR No.TNSA010009302017) on the file of the III Additional District and Sessions Court, Salem (FAC) is suspended pending appeal i.e., till disposal of the appeal;

(ii) The petitioner shall deposit the fine amounts before the trial Court if not already deposited;



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(iii) The petitioner shall execute a bond and furnish two sureties each for a likesum of Rs.10,000/- [Rupees Ten Thousand only] to the satisfaction of the learned III Additional District and Sessions Court, Salem (FAC). We make it clear that one of the sureties shall be a relative and if it is the wife, the fact that she was co-accused in the trial court shall not be put against her for being a surety if other conditions are satisfied;

(iv) The petitioner shall stay within Salem Town Police Station / Hasthampatti Police Station limits in Salem District and shall not visit Varagur Village, Attur Taluk, Salem District for the present / until further orders;

(v)The petitioner shall appear and sign before



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the trial court namely III Additional District and Sessions Court, Salem (FAC) every Friday at 10.30 am for the present / until further orders;

(vi)The petitioner shall give his place of residence to the Sessions Court to which he will be reporting every week and he will promptly intimate the Sessions Court if there is any change of address;

(vii)Though the above conditions are imposed by this Court we make it clear that if the petitioner files a petition under Section 317 of Cr.P.C., on a given Friday, it is open to the learned Sessions Judge to consider the same on its own merits and in accordance with law without being impeded by the order of this Court.



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9.Captioned Crl.MP is disposed of acceding to the suspension prayer albeit with the aforementioned conditions / directives.

[M.S., J.]

[R.S.V., J.]

27.07.2023

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P.S: Registry to forthwith communicate this order to Jail Authorities in Central Prison, Salem.



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