



Crl.M.P.Nos.19227 and 19770 of 2023

in

Crl RC No.2103 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.Nos.19227 and 19770 of 2023

in

Crl RC No.2103 of 2023

Sudhagar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Thirukoliur Police Station,
Kallakurichi District

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 381(1) of Cr.PC to suspend the sentence imposed on the petitioner in Crl A No.25 of 2023 by the Additional District Sessions Court, Villupuram District dated 30.10.2023 against the judgement passed by the learned chief Judicial Magistrate, Villupuram and District in SC No.68 of 2015 dated 15.02.2023 and release him on bail.

For Petitioner : Mr.R.Prabudoss

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



Crl.M.P.Nos.19227 and 19770 of 2023
in
Crl RC No.2103 of 2023

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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the imposed on the petitioner in Crl A No.25 of 2023 by the Additional District Sessions Court, Villupuram District dated 30.10.2023 against the judgement passed by the learned Chief Judicial Magistrate, Villupuram, District in SC No.68 of 2015 dated 15.02.2023 and release him on bail, pending disposal of the above Criminal Revision Case.

2. The petitioner/Accused 1 was convicted by the Trial Court for an offence under Section 294(b) and 307 IPC and sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.1000/- in default to under Simple Imprisonment for three months. Aggrieved against the Judgement, the petitioner has preferred an appeal before the Sessions Court and the Additional District and Sessions Court by Judgement dated 30.10.2023, dismissed the appeal and modified the sentence from three years to one year. Against which, the present revision has been filed.

3. The Gist of the case is that 16.01.2014 at around 5.00 P.m at Chettithangal Village while PW1 was returning back to his home, A1 uttered obscene



Crl.M.P.Nos.19227 and 19770 of 2023

in

Crl RC No.2103 of 2023

words against PW1 and assaulted him on his head, shoulders and hands using a deadly weapon. A2 to A4 wrongfully restrained PW1 and A1 assaulted him with crow bar and thereafter with Koduval.

4. The contention of the petitioner is that there is a strong motive for the victim/PW1 to implicate the petitioner and others in this case. The defacto complainant had stated about four accused persons which during investigation was found to be false and later, charge sheet has been filed against petitioner alone. Thereafter, PW1 in his evidence had stated about the accused A2 to A5 and filed a petition under Section 319 of Cr.PC and thereafter, they stood trial along with the petitioner. Later, the Lower Court acquitted A2 to A4 from this case. In this case, PW2 to PW4 is said to be the witnesses who had immediately taken the victim to the hospital and they had stated they are unable to identify the weapon used in the assault. PW9, the casualty Medical Doctor of Thirukovilur submits that PW1 could not give the details about the weapons used in the attack. Further PW1 does not clearly identify MO1 being the instrument which he was attacked. PW9 and PW14 are the Medical doctors attached to Tirukovilur and Jipmer hospital. From their evidence, it is seen that the injury could not have been sustained by using MO1. The Lower Court on the same set of evidence had acquitted A2 to A5 debelieving the same and on the other hand convicted the petitioner



Crl.M.P.Nos.19227 and 19770 of 2023

in

Crl RC No.2103 of 2023

is not proper. The medical evidence does not corroborate with the ocular evidence and MO1 is not identified and there is a clear motive on the side of PW1.

5. The learned Additional Public Prosecutor vehemently opposed for granting suspension of sentence stating that the petitioner is the leader of the Gang. A2 to A5 had joined hands with the petitioner in assaulting the victim, which was witnessed by PW2 to PW4. PW2 and PW4, who took the victim to the hospital and PW9 to PW14 are the doctors who treated the victim and had given Ex.P4 and P5. Based on the evidence of PW1 to PW14 and documents Ex.P1 to P9, MO1, the Trial Court had convicted the petitioner. The Lower Appellate had also confirmed the conviction but modified the sentence.

6. It is seen from records that initially A1 to A5 stood for trial. A5 died during trial and A2 to A4 were acquitted by the Trial Court disbelieving the evidence. But on the same evidence convicted A1 against some doubt. Further in this case, PW1 is not clear about MO1 used to attack. The case initially proceed as though PW1 was attacked with Crow Bar and thereafter, with Koduval and no Crow bar has been seized. The Doctor - PW9 and PW14 and Ex.P4 and P5 are not supported with X-ray, Scan report or other reports. In view of the same, the conviction under Section 326



CrI.M.P.Nos.19227 and 19770 of 2023
in
CrI RC No.2103 of 2023

needs reconsideration. Accordingly, exemption from surrender and the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal revision case and the petitioner is ordered to be enlarged on bail, on the following conditions:-

(i) The petitioner 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.

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the Trial Court may obtain a copy of their Aadhaar card or Bank Pass Book to ensure their identity. And

(iii) 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 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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Crl.M.P.Nos.19227 and 19770 of 2023

in

Crl RC No.2103 of 2023

M.NIRMAL KUMAR.,J

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7. Accordingly, these Criminal Miscellaneous Petitions are ordered.

19.12.2023

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Crl.M.P.Nos.19227 and 19770 of 2023

in

Crl RC No.2103 of 2023