



CRL MP(MD) No.4332 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Ninth day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL MP(MD) No.4332 of 2023
in
CRL A(MD) No.197 of 2023

BALAMURUGAN @ AUTO BALA ... Petitioner / Appellant / Sole Accused.

Vs

STATE REP BY
THE INSPECTOR OF POLICE
JAIHINDPURAM POLICE STATION,
MADURAI DISTRICT.
(IN CRIME NO.1249/2017)

... Respondent / Respondent / Complainant

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner/appellant/accused in SC No.588/2017 dt.25/11/2022 on the file of the Learned IVth Additional District and Sessions Court, Madurai and enlarge him on bail till the disposal of the Appeal.

Prayer in CRL A(MD) No.197 of 2023:

To call for the records relating to the judgement passed in S.C.No.588 of 2017 dated 25.11.2022 on the file of the IVth Additional District and Sessions Court, Madurai and set aside the same and acquit the Appellant / Accused from all the charges levelled against him.

Order : This criminal Miscellaneous petition coming up for orders on this day,
<https://www.mhc.tn.gov.in/judis>



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upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.GOPALA KRISHNA LAKSHMANA RAJA, Senior Counsel for M/S.RISHWANTH.S.G.L, Advocate for the petitioner and of Mr.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by M.NIRMAL KUMAR, J.]

This petition has been filed to suspend the sentence imposed against the petitioner / sole accused in S.C.No.588 of 2017, dated 25.11.2022 on the file of the learned 4th Additional District and Sessions Court, Madurai and enlarge him on bail pending disposal of the Criminal Appeal.

2.In the said judgment, the trial Court convicted the petitioner / sole accused for the offences under Sections 302, 450 and 506(ii) IPC and sentenced him for the offence under Section 302 IPC to undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo two years simple imprisonment; for the offence under Section 450 IPC to undergo 7 years rigorous imprisonment and to pay a fine of Rs.2,000/- and in default to undergo one year simple imprisonment and for the offence under Section 506(ii) IPC to undergo 5 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo one year simple imprisonment.

3.The case of the prosecution is that the accused is an auto driver and the



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deceased is a TATA Ace driver by profession. A week prior to the occurrence in the presence of P.W.12, there was a wordy quarrel between the accused and the deceased and the deceased informed his wife and others that his life is in danger at the hands of the accused and the accused was regularly picking up quarrel with him and also giving death threats. While so, on 05.09.2017, the accused had trespassed into the house of the deceased and caused stab injuries with knife. P.W.1 and P.W.2 wife and mother of the deceased, who were also present at the time of the occurrence, have taken the injured and rushed to the hospital of Dr.Navaneethan P.W.14, where he had examined and found the injured in serious condition, therefore, advised them to go to Government Hospital, Madurai. On reaching the Government Hospital, the injured was pronounced brought dead. Thereafter, P.W.1 lodged a complaint and the case was registered. After examination of the witnesses and collection of evidences and materials, charge sheet was filed.

4.During trial, on the side of the prosecution, P.W.1 to P.W.22 were examined and Ex.P.1 to P.16 were marked, besides M.O.1 to M.O.10 were marked. The trial Court, on perusal of the evidence and materials, had convicted the petitioner as stated above.



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5.The contention of the learned Senior Counsel appearing for the petitioner is that P.W.1 and P.W.2 stated that they are employed in Madurai Corporation as Health Workers. It is projected that on the date of occurrence when the deceased was having his lunch at about 1.45 p.m., along with P.W.1 inside the house, the accused said to have entered the house and stabbed him and caused serious injuries. He further submitted that the scene of occurrence itself is highly doubtful as could be seen from the evidence of P.W.9 and P.W.10 observation mahazar witnesses. Both the witnesses state that the blood stained articles and unstained articles were taken in front of the temple and not inside the house. Thus, the scene of occurrence is shifted.

6.He further submitted that P.W.1 stated that her husband was stabbed when he was taking his food. P.W.16 Doctor confirms that there was 300 grams partially digested food, which could have been taken between one to two hours before the death. However, as per the case of the prosecution when the deceased was taking food, the accused stabbed the deceased and caused injuries. If that is so, there could have been fresh food articles available. Hence, the presence of P.W.1 is highly doubtful. The Investigating Officer had also not failed to collect any articles from the scene of occurrence to confirm that the deceased was having food inside



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the house. Further, P.W.2 mother of the deceased had stated that at the time of occurrence she was talking with P.W.4. However, P.W.4 not supported the case of the prosecution. Hence, the presence of P.W.2 becomes highly doubtful. P.W.3 and P.W.8 brother and mother-in-law of the deceased though projected as eyewitnesses, they admit that they came to the scene of occurrence later. However, the trial Court had not considered these aspects and on the other hand, had convicted the petitioner.

7.The learned Additional Public Prosecutor for the respondent submitted that the petitioner / sole accused has got three previous cases and though he got acquitted in all the three cases, his past records shows that he is a person, who would not hesitate to harm others. The trial Court had considered the contentions of the petitioner made during the trial and thereafter only, convicted the petitioner. The petitioner can very well raise this point during the final hearing of the appeal. Hence, he opposed for grant of suspension of sentence.

8.Considering the submissions made on either side and on perusal of the materials placed before this Court, we are inclined to entertain this petition and to suspend the sentence imposed against the petitioner / sole accused. Accordingly,



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this petition is ordered and the imprisonment ordered by the trial Court through the impugned judgment is suspended subject to the following conditions:-

(i)The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the 4th Additional District and Sessions Court, Madurai; and

(ii)The petitioner shall appear before the 4th Additional District and Sessions Court, Madurai , once in a month on the first working day of every English Calender month at 10.30 a.m. until further orders and if he is not able to appear before the said Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the said Court on any other day in lieu of the date of his absence, as directed by the said Court.

sd/-
09/08/2023

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10/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

YUVA

To

1.The IV Additional District and Sessions Judge,
Madurai.



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2.The Inspector of Police,
Jaihindpuram Police Station,
Madurai District.

3.The Superintendent,
Central Prison, Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.S.SABBANI KARPURA JOTHI, Advocate, SR-12041(I), dated
09.08.2023.

ORDER
IN
CRL MP(MD) No.4332 of 2023
in
CRL A(MD) No.197 of 2023
Date :09/08/2023

ED/ /SAR- (10/08/2023) 7P / 6C

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