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

Wednesday, the Thirtieth 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.4765 of 2023
in
CRL A(MD)No.226 of 2023

NANDAGOPAL
AT PRESENT CONFINED AT CENTRAL PRISON,
MADURAI AS CONVICT PRISON

... PETITIONER/ APPELLANT/ SOLE ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
SOOLAKARAI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.57/2016)

... 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/ sole accused namely Nandagopal, S/o.Paramanathan, by the Learned Additional District and Sessions Judge, Virudhunagar by its judgment in S.C No.215/2016 dt.27.09.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.226 of 2023:

To call for the records of the impugned judgment made in S.C.No.215 of 2016 on the file of the learned Additional District and Sessions Judge, Virudhunagar dated 27.09.2022 and set aside the same.



Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.JEGADEESH PANDIAN M, 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.215 of 2016, dated 27.09.2022 on the file of the learned Additional District and Sessions Judge, Virudhunagar and enlarge him on bail pending disposal of the Criminal Appeal.

2. By the said judgment, the petitioner/sole accused was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 6 months rigorous imprisonment, for the offence punishable under Section 302 IPC.

3.1. The case of the prosecution is that the petitioner had some dispute with his wife, Rosemary, due to which, she had left him and she was living with her sister. The petitioner was agitated over the same and requested his father-in-law to bring back his wife and there was some dispute over the same. On 05.04.2016, when the deceased Nagaraj was sitting in front of the house of P.W.23 and chatting with her, the petitioner came there and asked why he had not sent her daughter with the accused. The petitioner got agitated on the reply of his father-in-law and dragged



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him and took him to nearby Anganvadi Centre and caused injuries by dashing him against the wall. P.W.11 and P.W.12, who were all residing in the same camp, found the deceased unconscious with blood injuries and took him to the Government Hospital, Virudhunagar before P.W.20, who had examined him and found the patient unconscious with smell of liquor. The same had been recorded in the accident register, Ex.P13. Thereafter, P.W.20 Doctor recommended for further treatment at Government Hospital, Madurai. In the meanwhile, the petitioner's father-in-law passed away.

3.2. P.W.1, the Special Revenue Inspector (incharge of the refugee camp) lodged a complaint before P.W.21, the Sub Inspector of Police, who registered the case and thereafter, P.W.22, the Inspector of Police took up the investigation, visited the scene of occurrence and prepared observation mahazar. After examination of the witnesses and collection of evidences and materials, charge sheet was filed.

4. Before the Trial Court, on the side of prosecution, P.W.1 to P.W.23 were examined and Ex.P1 to Ex.P22 were marked besides M.O.1 to M.O.7 were produced. On conclusion of the trial, the Trial Court had convicted the petitioner as stated above.

5. The primary contention of the learned counsel for the petitioner is that there is no eyewitness to the occurrence. The two eye witnesses, as projected by the



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prosecution, P.W.3 and P.W.23 have also not supported the case of the prosecution, except for P.W.23 stating about the earlier fight between the petitioner and the deceased and the petitioner dragging the deceased to the nearby Anganvadi Centre. Thereafter, there is no evidence as to what happened till P.W.11 and P.W.12 visited and saw the deceased with injuries. Further, the learned counsel for the petitioner submitted that P.W.20 Doctor had, in the accident register Ex.P13, clearly recorded that the deceased was in a drunken state and smell of alcohol was found. It is seen that the injuries were also only abrasions. He further submitted that in this case, admittedly, no weapon has been used. If the prosecution case is to be accepted, then also, the offence under Section 302 IPC is not made out and at the most, it would come under Section 323 IPC.

6. The learned Additional Public Prosecutor appearing for the respondent, on the other hand, vehemently opposed the suspension of sentence application by stating that the petitioner, his wife and the deceased are all Srilankan refugees staying in the same refugee camp at Virudhunagar District. The petitioner was married to the daughter of the deceased only two years before. The petitioner was a drunkard and he was creating trouble and harassment to his wife, owing to which, she had left the camp and was residing with her sister at Salem. For this reason, the petitioner had regularly quarrelled with his father-in-law and when the deceased Nagaraj was



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sitting along with P.W.23 and was chatting with her, the petitioner had come there, pulled Nagaraj by his collar, dragged him to the nearby Anganvadi Centre and thereafter, with an intention to kill him, the petitioner dashed him against the wall, thereby, causing fracture on his skull and severe injuries. P.W.15, postmortem Doctor, in the postmortem certificate Ex.P8, had confirmed the injuries and the death.

7. The learned Additional Public Prosecutor further submitted that it is a refugee camp and third persons cannot enter the camp. All the other witnesses have clearly stated that the petitioner was available in the camp and he was the only person, who had some dispute with the deceased. Thus, the Trial Court considered all these facts and therefore, rightly convicted the petitioner under Section 302 IPC. 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, it is seen that admittedly, no weapon has been used in this case. Further, the two witnesses, as projected by the prosecution, were P.W.3 and P.W.23, out of which, P.W.3 not supported the prosecution case and P.W.23 partially treated as hostile to the extent, petitioner had a fight with the deceased, dragged him by his collar to the nearby Anganvadi Centre. It is thereafter



only, he was found with injuries in unconscious state by P.W.11 and P.W.12. There is no evidence as to what happened in between. Further, in this case, the deceased was in a drunken state and there were lacerated injuries and contusion on his skull. Hence, from the evidences and materials available on record, it appears that the conviction under Section 302 IPC cannot be sustainable and there is a possibility of modification.

9. In view of the same, we are inclined to entertain this petition and to suspend the sentence imposed against the petitioner / sole accused. Accordingly, 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 Judicial Magistrate Court No.II, Virudhunagar; and

(ii)The petitioner shall appear before the Judicial Magistrate Court No.II, Virudhunagar, 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



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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/-
30/08/2023

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31/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

LM

TO

- 1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VIRUDHUNAGAR.
- 2 THE JUDICIAL MAGISTRATE NO.II
VIRUDHUNAGAR.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 4 THE INSPECTOR OF POLICE
SOOLAKARAI POLICE STATION, VIRUDHUNAGAR DISTRICT.
- 5 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



WEB CPM +1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-13036[I] dated 31/08/2023)

ORDER
IN
CRL MP(MD) No.4765 of 2023
in
CRL A(MD)No.226 of 2023
Date :30/08/2023

SS/DD/31/08/2023/8P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023