



CRL MP(MD) No.6354 of 2023

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

Tuesday, the Nineteenth day of September 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.6354 of 2023
in
CRL A(MD)No. 40 of 2022

PANDARAM

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
SENGOTTAI POLICE STATION,
TENKASI DISTRICT.
CRIME NO.120/2015.

...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 against the petitioner by Judgement dt.1/12/2021 in SC.No.104/2016 on the file of the Additional District and Session Judge(FTC), Tenkasi and grant bail to the petitioner

Prayer in CRL A(MD)No.40 of 2022:

Pleased to call for the records pertaining to the judgment dated 01.12.2021 in SC No. 104 of 2016 on the file of the Additional District Sessions Judge (FTC) Tenkasi and set aside the same as illegal.

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

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M/S.VINOTH BHARATHI R, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, 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 Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner, by judgment dated 01.12.2021, passed in S.C.No.104 of 2016, on the file of the Additional District and Sessions Judge (FTC), Tenkasi and to grant bail to the petitioner.

2. The petitioner is the sole accused in S.C.No.104 of 2016 before the Additional District and Sessions Judge (FTC), Tenkasi and vide judgment dated 01.12.2021, he was convicted and sentenced as under:-

Conviction under Section	Sentence
Section 302 I.P.C.	To undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for two years.
Section 294(b) I.P.C.	To pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for one month.

Challenging the aforesaid conviction and sentences, the petitioner filed CrI.A.(MD) No.40 of 2022. Pending the appeal, earlier the petitioner has filed CrI.M.P.(MD) No.12156 of 2022 seeking suspension of sentence and bail and the same was dismissed as withdrawn by this Court on 09.12.2022. Thereafter, the petitioner has now filed the instant Criminal Miscellaneous Petition seeking suspension of sentence

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and bail.

3. The learned counsel for the petitioner submitted that P.W.1 and P.W.2 are the wife and father-in-law of the deceased, who are interested witnesses. The trial Court has solely relied upon these two witnesses and convicted the accused. The learned counsel for the petitioner further submitted that in this case, there were four independent witnesses, viz., P.W.3, P.W.17, P.W.18 and P.W.19, who have not supported the case of the prosecution. He further submitted that Ex.P1-complaint is highly doubtful, since P.W.22, who is the Investigation Officer, has stated that P.W.2 had attested in the complaint as witness, wherein he signed in Tamil. However, P.W.2, in his evidence has deposed that he knows only Malayalam and therefore, the signature found in Ex.P1-complaint creates serious doubt. Further, there is a delay in sending the FIR to the concerned Magistrate. The occurrence said to have been taken place on 11.05.2015 at 8.30 p.m. and the FIR has been registered at 11.30 p.m., but the FIR has been reached the concerned Court only on the next day i.e., 12.05.2015 at 02.00 a.m. P.W.8, the Police Constable, who had sent the FIR to the Court, has stated in his evidence that the distance from the police station to the Court is only five minutes. However, the delay in sending the FIR to the Court has not been explained.

4. The learned counsel for the petitioner further submitted that the Investigation

Officer in his evidence has stated that there is a difference in the style of writing in the

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complaint as well as in the FIR. He further submitted that P.W.13, P.W.14 and P.W.16 are the Doctors, who had initially treated the deceased and conducted the postmortem. P.W.13, casualty Doctor, stated that she had not seen the second injury, which is on the liver. P.W.14, the postmortem Doctor stated that the second injury on the liver is the cause of death of the deceased. P.W.15, the Sub Inspector of Police, who registered the FIR gives the different version as of P.W.1. In this case, the presence of eyewitness is doubtful, who are interested witnesses and there is inordinate delay in the FIR reaching the Court as well as discrepancies in the evidences of the Doctors. He further submitted that from the date of conviction, the petitioner has been in prison and hence, he prayed for suspension of sentence.

5. The learned Additional Public Prosecutor submitted that in this case, there are two eyewitnesses viz., P.W.1 and P.W.2. P.W.13-Doctor, stated that P.W.1, who is the wife of the deceased, had brought her husband to the hospital at about 9.15 p.m., and since the health condition of the deceased was very critical, referred him to the Tenkasi Hospital for further treatment, issued the AR copy, which was marked as Ex.P.13. P.W.16-the Doctor, who examined the deceased, found that he was dead. Thereafter, P.W.1 went to the police station and lodged the complaint. Thereafter, P.W.22 conducted investigation and examined the witnesses in the scene of occurrence and arrested the accused and on his confession, the knife was recovered



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from him. He further submitted that P.W.6 in his evidence has stated that prior to the occurrence viz., at 7.15 p.m., the accused with the knife had told that he is going to kill the deceased and he told the same to P.W.1 and asked them to be alert. He further submitted that the trial Court, on analysing the evidence in proper perspective, has rightly convicted the petitioner/accused and hence, he strongly opposed the grant of bail.

6. We have heard the submissions made by both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that in this case there are two eyewitnesses, who have clearly spoken about the injury caused by the accused. The second injury is the deadly injury. P.W.13, who issued the AR copy, which was marked as Ex.P.13, has clearly spoken about the injury sustained by the deceased. P.W.14, who conducted the postmortem on the body of the deceased, has also stated that the second injury has caused the death of the deceased. This Court finds that there is no prima facie case has been made out to consider that the accused had not committed the offence and all the points raised by the learned counsel for the petitioner are to be decided only at the time of final hearing. Therefore, this Court is not inclined to grant suspension of sentence.



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8. In view of the above, this Court is not inclined to entertain the Criminal Miscellaneous Petition and the same is liable to be dismissed. Accordingly, it is dismissed.

sd/-
19/09/2023

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/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSM

TO

- 1 THE ADDITIONAL DISTRICT
SESSIONS JUDGE (FTC), TENKASI.
- 2 THE INSPECTOR OF POLICE
SENGOTTAI POLICE STATION, TENKASI DISTRICT.
- 3 THE CENTRAL PRISON,
PALAYAMKOTTAI.



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4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.6354 of 2023
and
CRL A(MD)No. 40 of 2022
Date :19/09/2023

PKP/JGB/SAR- /25.09.2023/ 7P/ 5C

Madurai Bench of Madras High Court is issuing certified
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