



CRL MP(MD) No.7389 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Thursday, the Fifth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.SUNDAR
and
The Hon`ble Mrs.Justice R. KALAIMATHI

CRL MP(MD) No.7389 of 2023
in
CRL A(MD) No.852 of 2022

SELVARAJ

... APPELLANT/SOLE ACCUSED

Vs

State Rep.by
THE INSPECTOR OF POLICE
PONNAMARAVATHI CIRCLE,
KARAIYUR POLICE STATION,
PUDUKKOTTAI DISTRICT.

... 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 in SC.No.128 of 2016 dt.29.11.2022 passed by the Learned Mahila Court, Pudukottai and enlarge the Petitioner on bail pending disposal of the above appeal.

Prayer in CRL A(MD).852/2022 :

To call for the records in S.C.No.128 of 2016 dated 29.11.2022 passed by the Learned Mahila Court, Pudukottai and to set aside the same.



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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.KARUPPASAMY PANDIYAN G, Advocate for the petitioner and of MR.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

Captioned 'Criminal Miscellaneous Petition' ('CrIMP' 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 'CrPC' for the sake of brevity and clarity).

2.The prosecution theory which the trial Court believed and convicted/sentenced the petitioner/appellant is that the victim and the petitioner were in a relationship i.e., they were in love according to prosecution for five years prior to the date of occurrence (to be noted date of occurrence is 28.10.2015); that the petitioner was married but he was in a relationship with the victim by suppressing his marriage; that the victim on coming to know about the petitioner's marriage confronted the petitioner with the same; that the relationship became sour owing to this confrontation; that under such circumstances the victim was pacified and the relationship continued but she left for her parental home and returned on the fateful day i.e., 28.10.2015 (date of occurrence) at around 08.00 a.m; that at around 09.00 a.m the petitioner set the victim on fire by sprinkling kerosene, the victim was taken to



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the hospital for treatment; that the victim was given treatment for 12 days; that the victim ultimately succumbed to the burn injuries on 10.11.2015 at 07.00 p.m; that the prosecution theory led to launching of criminal case inter alia for offences under Sections 302 and 417 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].

3.The defence was primarily pivoted on the point that it is a case of suicide by self-immolation and that the linchpin of the entire prosecution theory is Ex.P.7-Dying Declaration but that is not good enough to inspire the confidence of the Court for a conviction is the campaign of learned counsel for petitioner/appellant in this Court.

4.The trial Court i.e., the Mahila Court, Pudukottai, after full trial (AFT) believed the prosecution theory and made a Judgment of conviction dated 29.11.2022; that as regards the sentence, trial Court imposed life imprisonment and Rs.2,00,000/- fine with a one year Rigorous Imprisonment default provision qua fine for Section 302 of IPC charge and one year Rigorous Imprisonment with Rs.50,000/- fine and six months Simple Imprisonment default provision qua fine as regards section 417 IPC charge and as regards section 493 IPC charge there was an acquittal.

5.Mr.G.Karuppasamy Pandian, learned counsel for petitioner/appellant in his campaign qua suspension of sentence petition i.e., captioned CrIMP made the following points:



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(i) The victim had taken treatment for 12 days in the hospital, as the occurrence was on 28.10.2015 and she ultimately died on 10.11.2015 but the entire hospital records pertaining to this treatment had not been marked by the prosecution;

(ii) That the hospital records for this 12 days treatment were not marked has been fairly admitted by the Investigating Officer who was examined as P.W.11;

(iii) That victim's mother and one brother, who deposed as P.W.1 and P.W.2 respectively, have stated in the witness box that they were informed by the victim that she had immolated herself and thereafter they rushed to the hospital;

(iv) The Doctor, who treated the victim on being taken to the hospital, was not examined by the prosecution but the defence let in evidence and the Doctor was examined as D.W.1 and the evidence of D.W.1 supports the defence version.

6.Mr.S.Ravi, learned State Additional Public Prosecutor, in resisting the suspension of sentence plea, in his effort to show cause against release, adverting to the counter-affidavit which has been placed before this Court (owing to proviso to Section 389(1) of CrPC) submitted as follows:



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(i) The Dying Declaration is Ex.P.7 and a careful perusal of Dying Declaration would make it clear that the conviction deserves to be sustained;

(ii) The complaint, Ex.P.8 is tell tale;

(iii) P.W.2 (brother of victim) had only mentioned that P.W.1 (mother of victim) had informed him that victim had informed her that victim had self-immolated;

(iv) The trial Court, in the Judgment, more particularly in paragraph No.22 has recorded the position that the petitioner had made himself scarce and was absconding for four years which delayed the trial.

7.This Court, carefully considered the rival submissions, after perusing the case file and other records which were before this Court, comes to the conclusion that the prayer for suspension of sentence deserves to be acceded to (albeit subject to conditions which will be set out infra elsewhere in this order) and the reasons are i.e., dispositive reasoning is as follows:

(a) The conviction is anchored on Ex.P.7 Dying Declaration. The legal principle is that if Dying Declaration is a substantial piece of evidence and if it inspires confidence, it can become a convincing reason for conviction. In the case on hand, the attendant circumstances alluded



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to supra, leave us with the prima facie view that the conviction could not have been anchored solely on Ex.P.7. As regards dying declaration aspect, a very recent decision of Hon'ble Supreme Court being Irfan alias Naka Vs. State of Uttar Pradesh reported in 2023 SCC OnLine SC 1060 is of relevance as Hon'ble Supreme Court after dealing with various earlier judicial pronouncements set out certain factors (adumbrated in paragraph 62) which can be considered determinants as to when a dying declaration should be accepted. Irfan is a case where the appellant-convict was married twice. The second marriage by the appellant-convict was opposed by his son (one of the deceased) who was born through appellant-convict's first wife and even appellant-convict's two brothers (the other two deceased persons) also opposed the second marriage is the prosecution case. A few days before the date of incident, the appellant-convict had assaulted his son (deceased) and two other deceased intervened. On the fateful day, it was the case of prosecution that when all the three deceased persons were sleeping in one room, it was set fire by the appellant-convict. The dying declaration of two deceased were recorded. The trial court, considering the oral and documentary evidence arrived at a finding that prosecution had established its case and



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accordingly, found the accused-convict guilty and death sentence was imposed which was confirmed by the High Court on appeal. Hon'ble Supreme Court had extensively dealt with the aspect of dying declaration and held that it is unsafe to make a conviction on the basis of a dying declaration alone in cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration and most relevant paragraphs are paragraphs 63 and 64 which read as follows:

'63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying



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declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.'

We refrain ourselves from expressing any further opinion and leave this question open as it is a point to be argued in the main appeal, suffice to say that there is an arguable point in the main appeal;

(b) As regards the medical records for 12 days of treatment, the Investigating Officer (P.W.11) has fairly admitted in the box that the records have not been produced;

(c) The Doctor, who gave treatment, has not been examined by the prosecution but the defence side has let in evidence, examined him as D.W.1 and deposition of D.W.1 buttresses defence version;

(d) The evidence of P.W.1 and P.W.2 (mother and one brother



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respectively of victim) is to the effect that the victim called them and informed them that she had self-immolated herself (to be noted another brother of the victim was examined as P.W.3 and the deposition is not very different) in other words it is in tandem with the deposition of P.W.1 and P.W.2;

(e) We applied Omprakash Sahni principle i.e., the ratio in Omprakash Sahni Vs. Jai Shankar Chaudhary [2023 SCC OnLine 551] and as regards good chance of success in the appeal, our prima facie view is in favour of good chance of success in appeal but this stems from our narrative and dispositive reasoning supra which is sans appreciation of evidence and therefore the drill on hand fits into Omprakash Sahni principle also;

(f) We have also respectfully applied Kashmira Singh principle i.e., Kashmira Singh Vs. State of Punjab [(1977) 4 SCC 291] wherein the Hon'ble Supreme Court has made it clear that if time is likely to be consumed for the appeal to be heard out, suspension of sentence should be considered favourably;

(g) We have also respectfully applied Sidhartha Vashisht principle i.e., Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi)



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[(2008) 5 SCC 230], which talks about measurable distance of time as regards appeal being heard and going by obtaining determinants, this principle also enures to the benefit of petitioner/appellant in the case on hand;

(h) We find that the petitioner has thus far served 680 days sentence;

(i) As regards the absconding point raised by learned Additional Public Prosecutor which has been captured supra, we would be putting in a condition capturing the submission of learned counsel for petitioner/appellant offering immovable property security which would be set out elsewhere as part of adumbration of conditions for sentence - suspension infra;

(j) While dealing with the first point on Ex.P7 alluded to supra this Court has set out its prima facie view that there is an arguable point and in the light of dispositive reasoning articulated supra, we find that there are multiple arguable points which also tilts the balance in favour of acceding to the suspension of sentence prayer.

Therefore, in the case on hand, the petitioner has arguable point in the main appeal as alluded to supra.



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8. In the light of narrative discussion and dispositive reasoning thus far, the following order is made:

(i) The sentence of the trial Court i.e., sentence dated 29.11.2022 in S.C.No.128 of 2016 (CNR.No.TNPD070000062016) on the file of learned Sessions Judge, Mahila Court, Pudukottai, is suspended pending appeal subject to the conditions which are set out infra in the sub-paragraphs to follow:

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

(b) 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 Sessions Judge, Mahila Court, Pudukottai. We make it clear that one of the sureties shall be a blood relative;

(c) The petitioner offered immovable property security in response to the absconding point raised by the Prosecutor. It was submitted on behalf of petitioner, on instructions, that the petitioner's father owns a dwelling house in Pudukkottai and the value of the same is in the region of Rs.4,00,000/-, it is unencumbered and that will be offered as security.

We make it clear that this security will be subject to the satisfaction of the



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trial Court ie., learned Sessions Judge, Mahila Court, Pudukottai;

(d) The petitioner shall stay in Pudukotai District and shall not leave the District without prior permission from the trial Court;

(e) The petitioner shall appear and sign before the trial Court every Monday and Friday in the forenoon at half-past ten for the present i.e., until further orders;

(f) The petitioner shall furnish the address of his place of residence to the Sessions Court;

(g) As regards the condition that the petitioner should appear and sign before the trial Court every Monday and Friday, if a Monday or Friday happens to be a public holiday it will be the next court working day. As regards this condition, if for some reason there is any difficulty for the petitioner on a given Monday or a Friday and if a petition under Section 317 CrPC is filed, the same shall be considered by the trial Court on its own merits and in accordance with law untrammelled by such appearance twice a week being one of the conditions for suspension of sentence.



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9. Captioned CrlMP is disposed of in the aforesaid manner acceding to the suspension of sentence prayer albeit with the aforementioned conditions/directives.

sd/-
05/10/2023

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17/10/2023

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

PS
TO

1 THE SESSIONS JUDGE, MAHILA COURT, PUDUKKOTTAI.

2 THE INSPECTOR OF POLICE, PONNAMARAVATHI CIRCLE,
KARAIYUR POLICE STATION, PUDUKKOTTAI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-14744[I] dated
06/10/2023)

ORDER IN
CRL MP(MD) No.7389 of 2023
in CRL A(MD) No.852 of 2022
Date :05/10/2023

RS/DD/SAR-(17.10.2023) 13P 6C
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