



**CRL MP(MD) No.7403 of 2023**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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( Criminal Jurisdiction )

Tuesday, the Twenty 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.7403 of 2023  
in  
CRL A(MD)NO. 387 of 2023

EVEREST

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP BY,  
THE INSPECTOR OF POLICE,  
VELLISANTHAI POLICE STATION,  
MANAVALAKURICHI TALUK,  
KANYAKUMARI DISTRICT.  
CR.NO.113/2013

... 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 by the Judgment dt 16.03.2023 made in S.C.No.91/2016 on the file of Mahila Fast Track Court Nagarcoil and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A(MD)No. 387 of 2023:

Pleased to call for the records relating to the Judgment dated 16.03.2023 made in S.C.No. 91 of 2016 on the file of Mahila Fast Track Court, Nagercoil and set aside

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the conviction and sentence imposed against the Appellant and allow above appeal by acquitting appellant.

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 MR.M.AJMALKHAN, Advocate for M/S AJMAL ASSOCIATES for the petitioner and of MR.A.THIRUVADIKUMAR, Additional Public Prosecutor on behalf of the Respondents, the court made the following order:-

[Order of the Court was made by M.S.RAMESH, J.]

The petitioner/sole accused has been convicted and sentenced to undergo life imprisonment along with fine of Rs.5000/- for the offence punishable under Section 302 IPC, in default of which, two years of rigorous imprisonment and further ten years of rigorous imprisonment along with fine of Rs.5000/- for the offence punishable under Section 449 IPC, in default, to undergo two years of rigorous imprisonment, through judgment of the Mahila Fast Track Court, Nagercoil made in S.C.No.91/2016 dated 16.03.2023. Challenging the same, the Criminal Appeal has been filed before this Court. The present application is filed seeking for suspension of sentence.

2. According to the learned Senior Counsel for the petitioner, the case of the prosecution as projected is that on 25.05.2013 at about 2.00 PM, the petitioner had come to the house of the deceased with two litres of white colour plastic can containing diesel, which he had poured on her and set fire and had thrown the



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plastic can in her house. Thereafter, he had escaped on his two wheeler from the scene of occurrence. The deceased had died on 29.05.2013 at about 2.10 PM, due to grave burn injuries. Before the Trial Court, 14 witnesses were examined in all, out of which, P.W.1 - aunt of the deceased, P.W.2 - mother of the deceased, P.W.3 - brother of the deceased, P.W.4 - father of the deceased and P.W.6 - brother of the deceased, had all turned hostile. All the other witnesses are official witnesses.

3. It is the submission of the learned Senior Counsel for the petitioner that the dying declaration of the deceased was recorded in Ex.P18 by the Judicial Magistrate, P.W.13. By referring to the evidence of the learned Judicial Magistrate, the learned Senior Counsel submitted that though the presence of Dr.Gayathri was affirmed, she was not examined and therefore, due credence need not be given to the dying declaration. This apart, he would further submit that none of the independent witnesses have corroborated the dying declaration and in absence of the same, the judgment of the Trial Court may require interference.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that there are four oral statements of the deceased in Ex.P18, which is the dying declaration, the statement made to the Doctor (P.W.7), which is reflected in his testimony, the complaint of the deceased (Ex.P11) and 161(3) Cr.P.C



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is required.

statement of the deceased and in view of these four statements, no further evidence

5. We have perused the evidence of P.W.1. Before P.W.1 was treated as hostile, she had made a statement to the effect that when she had enquired with the deceased immediately after the incident, she had stated that the deceased had self-immolated herself, since she was mentally disturbed. Thereafter, the prosecution had treated her as a hostile witness. All the other independent witnesses have also turned hostile. Thus, apart from the dying declaration and the other statements made by the deceased, as pointed out by the learned Additional Public Prosecutor, there are no other corroborative evidence supporting the prosecution case.

6. A three Judge Bench of the Hon'ble Supreme Court, in a recent decision in the case of Irfan @ Naka Vs. the State of Uttar Pradesh, reported in 2023 SCC OnLine SC 1060, had held that the dying declaration alone may not be the incriminating evidence in the absence of any corroborating evidence. Likewise, in the case of Jaswant Singh Vs. State (Delhi Admn.), reported in AIR 1979 SC 190, it was held that in order to place reliance on the dying declaration, the circumstantial evidences should also support it.



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7. On a prima facie view, since all the independent witnesses have turned hostile and at least there is one witness, who had deposed that the deceased had given a statement that she had self-immolated herself due to her mental status, we are of the view that the sentence and conviction of the petitioner/sole accused can be suspended for the present. The issue as to whether the judgment of the Trial Court can be sustained only on the basis of dying declaration and other statements given by the deceased, can be deliberated at a later stage at the time of final disposal of the Criminal Appeal.

8. 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 Mahila Fast Track Court, Nagercoil; and

(ii)The petitioner shall appear before the Mahila Fast Track Court, Nagercoil, 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



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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/-  
29/08/2023

/ TRUE COPY /

30/08/2023  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

LM  
TO

- 1 THE SESSIONS JUDGE, MAHILA FAST TRACK COURT, NAGERCOIL.
  - 2 THE INSPECTOR OF POLICE  
VELLISANTHAI POLICE STATION,  
MANAVALAKURICHI TALUK, KANYAKUMARI DISTRICT.
  - 3 THE SUPERINTENDENT  
PALAYAMKOTTAI CENTRAL PRISON, TIRUNELVELI.
  - 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.M/S.AJMAL ASSOCIATES, Advocate ( SR-12916[I] dated 29/08/2023 )

ORDER  
IN  
CRL MP(MD) No.7403 of 2023  
in  
CRL A(MD)NO. 387 of 2023  
Date :29/08/2023

PKP/SAR- /30.08.2023/ 6P/6C  
Madurai Bench of Madras High Court is issuing certified  
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