



CRL MP(MD) No.7420 of 2023

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

Tuesday, the Third day of October Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice M.SUNDAR
and

The Hon`ble Mr.Justice R. SAKTHIVEL
CRL MP(MD) No.7420 of 2023
in
CRL A(MD) No.390 of 2023

R.CHINNA ALAGU @ NALLIAPPAN

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

State Rep.by

THE INSPECTOR OF POLICE

NATHAM POLICE STATION

(CRIME NO.295 OF 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 upon the petitioner in SC.No.304 of 2018, on the file of the Additional District and Sessions Judge, Dindigul dated 06.04.2023 and enlarge the petitioner on bail.

Prayer in CRL A(MD) No.390 of 2023 :

To call for the records pertaining to the Sessions Case in S.C.No.304 of 2018 on the file of the Additional District and Sessions Judge, Dindigul dated 06.04.2023 and to acquit the appellant/accused from all the charges.

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.ARUMUGAM.C.M., Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



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[Order of the Court was made by R.SAKTHIVEL., J.]

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The petitioner herein, the appellant/sole accused in the main Criminal Appeal, has filed the Criminal Miscellaneous Petition praying to suspend the sentence of imprisonment passed by the learned Additional District and Sessions Judge, Dindigul (hereinafter referred to as 'learned Sessions Judge' for the sake of brevity) by judgment dated 06.04.2023 made in Sessions Case No.304 of 2018 and enlarge him on bail pending disposal of the aforementioned Criminal Appeal.

2.The respondent/Police filed a final report under Section 302 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC' for the sake of brevity) in which the petitioner was convicted and sentenced to undergo life imprisonment and fine of Rs.10,000/-, in default of payment of fine, to undergo three months simple imprisonment. The petitioner has been serving time since the date of judgment i.e., 06.04.2023. Feeling aggrieved with the conviction and sentence, the petitioner filed Criminal Appeal (MD) No.390 of 2023 along with the instant Criminal Miscellaneous Petition seeking suspension of sentence and bail.

3.Learned Counsel for the petitioner has argued that the petitioner has been incarcerated since 06.04.2023; that in this case, the prosecution examined 10 witnesses and marked Exs.P1 to P21 documents and marked material objects M.Os.1 to 16. Further, the learned counsel submitted that there is no eye witness in this case,



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prosecution case is solely rested on circumstantial evidence. The alleged 'last seen theory' projected by the prosecution that the deceased and the accused were last seen together before the occurrence has not been established and the learned Sessions Judge did not appreciate the evidence of P.W.5 and P.W.6 in a correct perspective. Further, the learned Sessions Judge failed to appreciate the fact that P.W.6 is interested witness, close relative of deceased. Further, argued that the learned Sessions Judge failed to consider the fact that the medical evidence does not support the prosecution case. Learned counsel further argued that the petitioner has good chance of acquittal in the appeal, accordingly, he has prayed to allow the petition. Further, learned counsel has submitted that the petitioner owns agricultural land and he will not abscond pending criminal appeal. Learned counsel has further submitted that petitioner is ready and willing to obey the conditions, if any, imposed by the Court. Further, the learned counsel has submitted that the petitioner is even ready to deposit his title deeds as security for his due presence in the Criminal Appeal.

4.Per contra, learned Additional Public Prosecutor for the State has submitted that the petitioner had absconded during the trial. Hence, the trial had delayed only due to the act of the petitioner. Further submitted that the evidence of P.W.5 and P.W.6 is trustworthy and inspire confidence of the learned Sessions Judge. In the said circumstances, if the sentence is suspended and bail is granted to the petitioner, the



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petitioner may abscond and thereby cause delay to the appeal. Accordingly, learned

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Additional Public Prosecutor has prayed to dismiss the present petition.

5.This Court has considered the submissions made by both sides and perused the case files.

6.The case is fully rested on the circumstantial evidence. In general, if direct evidence is available in a criminal case, motive is irrelevant. But if the case is solely based on circumstantial evidence, 'motive' can also be considered as additional link of the circumstances. In this case, the motive as alleged by the prosecution has not been proved. Learned Sessions Judge has observed the said finding in paragraph No.6 of the judgment. Further, we have perused the evidences of P.W.5 and P.W.6, their evidence is not specific to the prosecution case. It is stated that medical evidence has also not fully supported the prosecution case.

7.Considering the facts and circumstances, this Court is of the prima facie view that the petitioner has a good chance of success in the appeal. Further, main appeal is likely to consume time for being heard out.

8.It is apposite to mention here that Hon'ble Supreme Court in Omprakash Sahni's case [Omprakash Sahni Vs. Jai Shankar Chaudhary & another reported in 2023 SCC Online SC 551] in paragraph No.33 has held as follows:

'However, while undertaking the exercise to ascertain whether the



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convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.'

9. We have respectfully considered and followed the above dictum. Considering the period of incarceration and also considering the facts and circumstances of the case, we are inclined to suspend the sentence of imprisonment. We make it clear that the observations made in this order are of the limited purposes of suspension of sentence and order of bail and will have no bearing on the appeal.

10. Therefore, the substantive sentence of imprisonment is alone suspended hereby and bail is granted subject to the following conditions:

- (i) The petitioner shall execute a bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) and furnish two sureties each for a like sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the satisfaction of the learned Sessions Judge;
- (ii) Petitioner shall deposit his original title deed(s) pertaining to his immovable



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property. The property covered under the title deed shall have market value of not less than Rs.1,00,000/- (Rupees One Lakh Only) as on today;

(iii) The petitioner shall appear and sign daily at 10.30 a.m. before the learned Sessions Judge until further orders. In case, the petitioner is unable to appear on the specified day, he is entitled to file a petition under Section 317 of the Code of Criminal Procedure, 1973 and the learned Sessions Judge shall decide the same on its own merits and as per law;

(iv) The petitioner shall not threaten the witnesses either directly or indirectly;

(v) The petitioner shall not enter into the residence or workplace of the legal heir/legal heirs of the deceased.

(vi) On breach of any of the aforementioned conditions, the learned Sessions Judge is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions are imposed by themselves as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) 13 SCC 283.

sd/-
03/10/2023

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19/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

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1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, DINDIGUL.

2 THE INSPECTOR OF POLICE, NATHAM POLICE STATION, NATHAM.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-14561[I] dated 03/10/2023)

ORDER IN
CRL MP(MD) No.7420 of 2023
in
CRL A(MD) No.390 of 2023
Date :03/10/2023

RS//SAR-(19.10.2023) 7P 6C

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