



CRL MP(MD) No.12978 of 2022

WEB COPY

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

Monday, the Seventeenth day of July 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.12978 of 2022
in
CRL a(MD) No.415 of 2022

BOSE

... Appellant / Sole Accused

Vs

STATE THROUGH
THE INSPECTOR OF POLICE
THIRUPULANI POLICE STATION,
RAMANATHAPURAM DISTRICT.
(CRIME NO.78/2018)

... 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.82/2019 dated 10.03.2022 on the file of the Learned Principal Sessions Court, Ramanathapuram and enlarge the petitioner on bail pending disposal of above criminal appeal.

Prayer in CRL A(MD) No.415 of 2022:

To call for the records relating to the judgment in S.C.No.82 of 2019 dated 10.03.2022 on the file of the Learned Principal Sessions Court, Ramanathapuram set aside the same and allow this criminal appeal.

<https://www.mahc.mil.gov.in/judis>



CRL MP(MD) No.12978 of 2022

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.M.SUBASH BABU, Senior Counsel for M/S.SUSIKUMAR.C, 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.]

The appellant in CrI.A(MD)No.415 of 2022 filed this petition seeking suspension of sentence.

2. The petitioner herein who is a single accused in S.C.No.82 of 2019 on the file of the Principal Sessions Court, Ramanathapuram was convicted by the Trial Court for the offences under Sections 341, 302 and 506(ii) of IPC by Judgment dated 10.03.2022, against which, he filed the appeal and the present suspension of sentence petition in the appeal.

3. The learned Senior Counsel appearing for the petitioner submitted that in this case, five persons have been projected as eyewitnesses, of which, PW1 to PW3 are close relatives to the deceased and PW4 and PW5 are independent witnesses who do not support the prosecution. He further submitted that, PW1 had stated that the accused had assaulted the deceased using beer bottle on his face. There is no corresponding injury to that effect as to be seen from the Post Mortem Report given by PW9. He further submitted that, though PW1 had stated that he had lifted



CRL MP(MD) No.12978 of 2022

the deceased immediately after the occurrence and blood stain was found in his clothes, the same has not been recovered. The occurrence is said to have taken place at 03.20 P.M., the complaint was lodged at 05.00 P.M. and the complaint reached the Court only at 11.15 P.M. and therefore, there has been inordinate delay. No reasons whatsoever have been given for the delay. Further, there has been contradictions among the evidences of PW1 to PW3. Without considering these important facts, the Trial Court has convicted the appellant. The petitioner herein has got a fair and good chance in the appeal and in view of the same, he had filed this suspension of sentence application.

4. The learned Additional Public Prosecutor on the other hand had strongly objected to this petition. According to him, in this case, PW1 to PW3 along with the deceased were passing through the area for purchasing firewood. At that time, the accused had come there questioning the deceased and assaulted him. It is a retaliation murder. The deceased and the witnesses knew each other. There is no dispute with regard to the identity. The grounds on which the petitioner assails this petition are (i) no reasons were given for the delay (ii) injuries on the face of the deceased are not explained (iii) PW1 to PW3 are relatives of the deceased and the independent witnesses PW4 and PW5 have not supported the case of the prosecution. PW1 to PW3 are relatives, but, that does not alone discard their



CRL MP(MD) No.12978 of 2022

WEB COPY

evidence, if their evidence is trustworthy and reliable. The Trial Court considered the same and convicted the petitioner. Further, the fatal injury of the deceased caused due to the usage of MO2 (knife) and the other injuries have been clearly spoken to by the Doctor PW9 who had done Post Mortem. As regards the assault with the beer bottle, this aspect has also been spoken to by PW9, which has also been considered by the Trial Court. He further submitted that in this case, the assault is at 03.20 P.M., subsequent to which, service of Ambulance has been requested. Thereafter, Ambulance has reached the scene of occurrence and the deceased was taken away in the Ambulance. There was some delay for the above reasons and complaint came to be lodged at 05.00 P.M. The distance between the scene of occurrence and the police station is 11 kms and the distance between the Police Station and the Court is 10 kms, which is about one hour travel. So, according to him, there is no unexplained delay in this case. PW1 himself admits that the complaint was written by some other person. The Trial Court, after taking to consideration all the facts, found that there is no reason to disbelieve the reasons of PW1 to PW3, which are supported with medical evidence.

5. Heard both sides and perused the materials placed before this Court.

6. In the recent decision in Omprakash Sahni vs Jay Shankar Chaudhary and another reported in (2023) 6 SCC 123, the Honourable Apex Court had held that the



CRL MP(MD) No.12978 of 2022

WEB COPY

endeavour on the part of the High Court while dealing with a petition for suspension of sentence would be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case, in which, ultimately the convict stands a fair chance of acquittal.

7. In the background of the ratio laid by the Honourable Apex Court and in view of the submissions made above, we are of the view that the answer to such a question cannot be affirmative and therefore, the present application seeking suspension of sentence did not require consideration.

8. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
17/07/2023

/ TRUE COPY /

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

MBI/LM

To

1.The Principal Sessions Judge,
Ramanathapuram.

2.The Inspector of Police,
Thirupulani Police Station,
Ramanathapuram District.



CRL MP(MD) No.12978 of 2022

3.The Superintendent,
Cenra Prison, Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) No.12978 of 2022
in
CRL a(MD) No.415 of 2022
Date :17/07/2023

ED/DD/SAR- (10/08/2023) 6P / 5C

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