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

Thursday, the Seventeenth 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.13724 of 2022
in
CRL A(MD)NO.412 of 2022

AROCKIASAMY

... PETITIONER/ APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
KALLAKUDI POLICE STATION,
TRICHY DISTRICT.
CR.NO.74/2014

... 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 on the petitioner by the Learned III Additional District and Sessions Judge, Tiruchirappalli in S.C.No.330/2018 dt 14.06.2022 and release the petitioner on bail pending disposal of the above Crl.Appeal.

PRAYER in CRL A(MD)No.412 of 2022:

To call for records and set aside the Judgment passed by the learned III Additional District and Sessions Judge, Tiruchirappalli in S.C.No.330 of 2018 dated 14.06.2022 and acquit the appellant herein.

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.T.J.EBENEZER CHARLES, Advocate for MR.T.A.OMPRAKASH, 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 and order dated 14.06.2022 passed in S.C.No.34 of 2021 on the file of the III Additional District and Sessions Judge, Tiruchirappalli, and to enlarge the petitioner/A3 on bail pending disposal of the above appeal.

2. The petitioner, is arrayed as A3, in S.C.No.34 of 2021 before the III Additional District and Sessions Judge, Tiruchirappalli and vide judgment dated 14.06.2022, he was convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year for the offence under Section 302 IPC. Challenging the aforesaid conviction and sentence, the petitioner has filed CrI.A.No.412 of 2022 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.



Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the
respondent/State.

4. It is a case of double murder. It is the case of the prosecution that the deceased /D1 is the brother of the petitioner herein. D2 is the son of D1. On 09.04.2014, there was some quarrel with regard to the partition of property among the petitioner's family and the family of D1. On the same day, at about 6.30 p.m., the petitioner's son/ A1 said to have abused the family of the deceased, who are residing within 200 feet. The deceased had questioned the same and a fight broke out. At that time, A1 Sasikumar using a spear had inflicted pierced wound on the chest and also on the head of D1. The petitioner herein said to have used a spear had caused injury on the right shoulder of D1. When D2, who is the son of D1, had come for the rescue of his father, he was also attacked by A1, thereby D1 and D2 succumbed to the injuries and the accused fled away from the scene of occurrence. Thereafter, on the complaint of P.W.1, a case has been registered.

5. During trial, on the side of the prosecution, P.W.1 to P.W.16 were examined, Ex.P1 to Ex.P24 were marked besides the materials objects. On the side of the accused, Ex.D1 and Ex.D2 were marked. On conclusion of trial, the accused were



convicted and sentenced as stated hereinabove.

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6. The contention of the learned counsel for the petitioner is that it is an admitted case of the prosecution that D1 is none other than the brother of the petitioner herein. There was a property dispute between them. The petitioner had gone to the house of the deceased in the morning hours on 09.04.2014 and requested his brother to amicably share the property among themselves, which was objected to by D1, who abused the family of the petitioner and thereafter, the petitioner had returned home. On the same day, evening, it was D1 and his son and their family members had come to the petitioner's house and picked up quarrel, which ended in exchange of blows, in which, both D1 and D2 had sustained injuries on their right shoulders. In the said melee, the family members of the petitioner were also sustained grievous injuries, which, the prosecution had withheld and though the investigating officer had come to know about the same, he did not take any steps in this regard. The wound certificate of the petitioner as well as his sons have been marked as Ex.D1 and Ex.D2. He further submitted that P.W.1 the wife of D2 in her evidence, had deposed that this petitioner/A3 had assaulted P.W.1 on her head and she has not stated anything with regard to the assault either on D1 or on D2. P.W.4 wife of D1 except for omni bus statement that the petitioner had inflicted injuries by using spear,



she does not speak about the petitioner going near D1 and D2. P.W.7 and P.W.8 did not support the prosecution. It is his further contention that it is evident from the evidence of P.W.14, Doctor, that the fatal injuries were not caused by the petitioner herein and hence, prayed for suspension of sentence.

7. On the other hand, the learned Additional Public Prosecutor submitted that it is a case of double murder, where the son and father were done to death by the accused herein. It is the accused party, who are the aggressors, started the quarrel. In the melee, it is the accused, ie., A1 using a spear had inflicted injuries on the deceased and due to which, D1 and D2 died on the spot. As regard the injuries sustained by the petitioner and his son, the same finds place in the complaint Ex.P1 and the Investigating Officer also deposed about the same. The presence of the petitioner in the scene of occurrence is spoken to by the witnesses. In this case, two persons were done to death, the medical evidence corroborated the same, which was rightly considered by the trial Court and the trial Court convicted and sentenced the accused and hence, he opposed the grant of bail.

8. We have heard the submission made by both sides and perused the materials available on record.



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9. It is a case of double murder. From the medical report, the case against the petitioner is that, he had caused injuries on the right shoulders of D1 and D2. The eyewitnesses namely, P.W.1 and P.W.4 give a different version, the ocular evidence contradictory to the medical evidence as regards the petitioner. Further, postmortem report and postmortem Doctor confirmed fatal injuries not caused by the petitioner herein either on D1 or on D2. Apart from this, the appeal is not likely to be taken up in the near future and that there are arguable points in favour of the petitioner herein, the petitioner is entitled for the relief of suspension of sentence.

10. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner on the following conditions:

- (I) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the III Additional District and Sessions Judge, Tiruchirappalli.



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- (ii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
17/08/2023

/ TRUE COPY /

21/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RR/SMN2

TO

- 1 THE III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, TIRUCHIRAPPALLI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY,.
- 3 THE INSPECTOR OF POLICE
KALLAKUDI POLICE STATION, TRICHY DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



WEB COUNCIL +1 CC to M/s.T.J.EBENEZER, Advocate (SR-12378[I] dated 17/08/2023)

ORDER
IN
CRL MP(MD) No.13724 of 2022
in
CRL A(MD)NO.412 of 2022
Date :17/08/2023

SS/21/08/2023/8P/6C

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