



CRL MP(MD) No.14469 of 2023

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

Friday, the Twenty Second day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.14469 of 2023

in

CRL A(MD) No.77 of 2023

HAMEED

... Appellant / Accused No.1

Vs

THE INSPECTOR OF POLICE
AATHOOR POLICE STATION,
THOOTHUKUDI DISTRICT.
(CRIME NO. 205 OF 2012)

... 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 me in S.C No. 59 of 2015 on the file of the Honble Assistant Sessions Court, Thiruchendur dated 22.12.2022 and release on bail till the disposal of the appeal.

Prayer in CRL A(MD) No.77 of 2023:

To call for the entire records connected to the judgment in S.C.No.59 of 2015 on the file of the Assistant Sessions Court, thiruchendur dated 22.12.2022 and set aside the conviction and sentence imposed against the 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 M/S.ALAGUMANI R, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the



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following order:-

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Reserved on : 04.12.2023

Pronounced on : 22.12.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in S.C.No.59 of 2015, dated 22.12.2022 by the Assistant Sessions Court, Thiruchendur and release the petitioner on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution is that on 26.10.2012 at about 9.00 p.m., the defacto complainant and other witnesses namely Rahamathullah and Kaleel Rahman questioned the accused as to why he did not go for job in hotel after receiving the money. Over the above said enquiry, trouble arose and the accused by abusing Rahamathullah in a filthy language, with intention to kill him caused assault with brandy bottle. The defacto complainant namely Rahamathuallah sustained grievous injuries on the head, left hip region. When that was sought to be intervened by Kaleel Rahman, he was also assaulted, causing injury on neck region. Based on the complaint, FIR was registered in Crime No.205 of 2012 for the offence under Section 294(b), 307 and 506(ii) of IPC. After completion of investigation, final report was filed and the Assistant Sessions Court, Thiruchendur has taken the case on file in S.C.No.59 of 2015.



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3. Before the trial Court, on the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and exhibited 15 documents as Ex.P1 to Ex.P5 and one material object was marked as M.O.1. On the side of the accused, 1 witness was examined as D.W.1 and no document was marked.

4. The learned trial Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 22.12.2022 that the accused has found guilty under Section 307 (2 counts) and 506(ii) of IPC and convicting the accused and sentenced to undergo simple imprisonment for a period of 10 years for each count and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six years for each count for the offence under Section 307 (2 counts) IPC and sentenced to undergo simple imprisonment for a period of 5 years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of three months. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. The learned counsel appearing for the petitioner would submit that P.W.2 came to the place of the occurrence after thirty minutes of the occurrence and



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injuries suffered by the witnesses were not corroborated with the medical evidence.

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P.W.11 – Investigating Officer has failed to recover the blood stained soil from the occurrence place and blood stained clothes of P.W.1 and P.W.2 and failed to explain the reason for the delay for registering the F.I.R. Further, the learned counsel for the petitioner would submit that this is the third application and the earlier applications were dismissed by this Court in Crl.M.P(MD)No.1263 of 2023 and Crl.M.P(MD) No.6847 of 2023 on 09.02.2023 and 12.05.2023 respectively and also submitted that this petition has been filed mainly on the ground that the petitioner is in judicial custody from 22.12.2022 and he is the only breadwinner of his family and hence, he prayed to suspend the sentence imposed on the petitioner.

7. The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner by breaking the brandy bottle, had attacked the P.W.1 and P.W.2 and caused grievous injuries and the Trial court has rightly appreciated the evidence and correctly passed the judgment convicting the accused as stated therein. Further, he would submit that this is the third application and the earlier applications were dismissed by this Court on 09.02.2023 and 12.05.2023 on the ground of gravity of offence committed by the petitioner. There is no change in circumstances and without any valid ground, the present petition has been filed by the petitioner. Hence, he strongly opposed to grant suspension of sentence.



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8. The earlier applications for suspension of sentence filed by the petitioner in Crl.M.P(MD)No.5454 of 2023 and Crl.M.P(MD)No.11019 of 2023 were dismissed by this Court on the ground of gravity of offence and also considering the period of incarceration. Now, this application is filed by the petitioner without referring the change of circumstances to consider the case.

9. Since there is no change of circumstance and also considering the gravity of offence and the manner in which the offence was committed by the petitioner, this Court does not find any new ground to suspend the sentence imposed on the petitioner.

10. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
22/12/2023

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/01/2024
Sub-Assistant Registrar
(C.S.I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

To

1.The Assistant Sessions Judge,
Thiruchendur.



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2.The Inspector of Police,
Aathoor Police Station,
Thoothukudi District.

3.The Superintendent,
Central Prison,
Palayamkottai.

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

ORDER
IN
CRL MP(MD) No.14469 of 2023
in
CRL A(MD) No.77 of 2023
Date :22/12/2023

ED/ JGB /SAR- (04/01/2024) 6P / 5C

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