



CRL MP(MD) No.15309 of 2023

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

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

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15309 of 2023

in

CRL A(MD)No. 302 of 2023

RAJESH

...PETITIONER/1<sup>st</sup> APPELLANT

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,  
THUCKALAY,  
KANYAKUMARI DISTRICT.

2 THE INSPECTOR OF POLICE  
PALUKAL POLICE STATION,  
KANYAKUMARI DISTRICT.

... RESPONDENTS/RESPONDENTS

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge him on bail by suspending the sentence imposed on the petitioner by the Mahila Fast Track Court, Nagerkovil (Camp Court, Kuzhithurai) in SC No.59/2010 dt.09.02.2023, pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No. 302 of 2023:

Pleased to call for records to set aside the judgment made in S.C.No. 59 of 2010 on the file of the Mahila Fast Track Court, Naagercoil (Camp Court, Kuzhithurai) dated 09.02.2023.



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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.D.VENKATESH, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 16.11.2023

Pronounced on : 08.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 09.02.2023 made in S.C.No.59 of 2010 on the file of the Mahila Fast Track Court, Nagerkovil (Camp Court, Kuzhithurai) and to enlarge him on bail till the disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The petitioner herein arrayed as Accused No.1 in the case. The petitioner/Accused No.1 and the deceased Sowmya fell in love, eloped and married on 09.02.2009. After marriage, they lived in the petitioner/Accused No.1's house. At the instance of Accused Nos.2 and 3 the petitioner tortured and harassed the victim by demanding dowry. Upon dowry harassment of petitioner and other accused, the Sowmya committed suicide on 16.08.2009. On the basis of complaint given by the father of the deceased, FIR was registered in Crime No.226 of 2009 under Sections 304(B)(2) and 498(A) of IPC. P.W.19 - The Deputy Superintendent of Police did investigation and laid charge sheet. The petitioner was charged for the offences



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under sections stated above.

(i) To prove the charge, the prosecution examined 19 witnesses as P.W.1 to P.W.19 and marked 18 exhibits as Ex.P1 to Ex.P18 and one MO marked. On the defence side D.W.1 was examined and Ex.D.1 and Ex.D.2 was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/Accused No.1 and Accused No.2 guilty under Sections 304(B)(2) and 498(A) of I.P.C. and convicted and sentenced the petitioner/Accused No.1 to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of one year for the offence under Section 304(B)(2) of IPC and sentenced him to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of six months for the offence under Section 498(A) of IPC. Accused No.2 was sentenced to undergo Simple Imprisonment for a period of 7 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of six months for the offence under Section 304(B)(2) of IPC and sentenced to undergo Simple Imprisonment for a period of 3 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of six months for the offence under Section 498(A) of IPC and ordered the sentence of imprisonment to run concurrently by passing impugned judgment dated 09.02.2023.



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3. Aggrieved by the conviction judgment, the Accused Nos.1 and 2 preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner/Accused Nos.1 and 2 filed CrI.M.P.(MD) No.7464 of 2023 seeking for suspension of sentence and for bail till the disposal of appeal and the same was dismissed as against the petitioner/Accused No.1, however Accused No.2 was granted bail by this Court on 18.05.2023. Accused No.3 was acquitted.

4. The petitioner/Accused No.1 has filed this petition 2<sup>nd</sup> time seeking suspension of sentence and bail.

5. Heard both sides and perused the records in this petition.

6. The learned counsel for the petitioner has submitted that the petitioner/Accused No.1 and the victim loved each other and married themselves. The petitioner/Accused No.1 has not committed any dowry demand. The P.W.16 - Social Welfare Officer has clearly deposed that there is no dowry harassment. As also P.W.11, P.W.12 and P.W.14 deposed that there was no dowry demand by the petitioner/Accused No.1. As the victim belonged to upper class, the P.W.1 to P.W.3 had vengeance against the petitioner/Accused No.1 as he got married the deceased. The deceased committed suicide. The death is not dowry death. The P.W.1 to P.W.3 foisted the case against the petitioner. The petitioner is in prison for the past 280 days from the date of judgment. The petitioner has a fair chance of succeed in appeal.



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Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Additional Public Prosecutor would submit that the petitioner and the deceased did love marriage. After marriage, upon ill advice of his mother and uncle, the petitioner/Accused No.1 started dowry demand and tortured her. Prior to death, there was several wordy quarrels. Moreover, the occurrence took place in the house of petitioner/Accused No.1. There was no proper explanation offered by the petitioner/Accused No.1 for the cause of death of deceased. The Trial Court has correctly appreciated the evidence and held that the death was dowry death and has correctly passed the judgment convicting the accused as stated therein. Therefore, he strongly opposed to grant suspension of sentence and bail.

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the prosecution witnesses P.W.11, P.W.12, P.W.14 and P.W.16 deposed that there was no dowry demand over the deceased and the petitioner has a fair chance of succeed in appeal. However, these are to be decided while deciding the appeal on merits. At the same time, the

learned counsel for the petitioner pointed out that certain infirmities and



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inconsistencies in this case. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future. Accused No.2 was granted bail by suspending the sentence awarded to her by this Court. The petitioner/Accused No.1 is in prison for more than 280 days from the date of conviction. In the above circumstances and also considering incarceration period of petitioner/Accused No.1, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Nagercoil;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the



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surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court on first working day of every week at 10.30 a.m., until further orders 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 of 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/-  
08/12/2023

/ TRUE COPY /

08/12/2023  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

VSD

TO

- 1 THE SESSIONS JUDGE  
MAHILA FAST TRACK COURT ,  
NAGERCOIL (CAMP COURT, KUZHITHURAI)
- 2 THE JUDICIAL MAGISTRATE NO.1  
NAGERCOIL.
- 3 DO THROUGH:  
THE CHIEF JUDICIAL MAGISTRATE,  
KANYAKUMARI DISTRICT @ NAGERCOIL.



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- 4 THE DEPUTY SUPERINTENDENT OF POLICE, THUCKALAY,  
KANYAKUMARI DISTRICT.
- 5 THE INSPECTOR OF POLICE  
PALUKAL POLICE STATION,  
KANYAKUMARI DISTRICT.
- 6 THE SUPERINTENDENT  
CENTRAL PRISON, PALAYAMKOTTAI.
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.D.VENKATESH, Advocate ( SR-17498[I] dated 08/12/2023 )

ORDER  
IN  
CRL MP(MD) No.15309 of 2023  
in  
CRL A(MD)No. 302 of 2023  
Date :08/12/2023

PKP/08.12.2023/ 8P/ 9C

Madurai Bench of Madras High Court is issuing certified  
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