



CRL MP(MD) No.15424 of 2023

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

Tuesday, the Twenty Eighth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15424 of 2023

IN

CRL A(MD)No. 977 of 2023

BALAN @ BALUCHAMY

... PETITIONER/APPELLANT

Vs

**THE INSPECTOR OF POLICE
PALANI TALUK POLICE STATION,
PALANI,
DINDIGUL DISTRICT.
CR.NO.440/2014**

... RESPONDENT/RESPONDENT

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 Sentence imposed by the Principal Assistant Sessions Court Palani in SC.No.217/2017 dt 4.10.2023 and enlarge the petitioner on bail pending disposal of the above criminal Appeal.

Prayer in Crl A(MD)No. 977 OF 2023:

To call for the records and set aside the order passed by the Principal Assistant Sessions Court, Palani in S.C.No. 217 OF 2017 dated 04.10.2023.

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.V.KANNAN, Advocate for the petitioner and of MR.B.NAMBISELVAN,

<https://www.mhc.tn.gov.in/judis>



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Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

Reserved on : 01.11.2023

Pronounced on : 28.11.2023

The petitioner has filed this petition to suspend the sentence imposed against him and release him on bail pending disposal of the Criminal Appeal against the judgment passed by the learned Principal Assistant Sessions Judge, Palani in S.C.No.217 of 2017 dated 04.10.2023.

2.The brief facts of the prosecution case:

On 15.09.2014, the petitioner/accused waylaid the defacto complainant, when she was walking near the river canal and committed robbery of 2 ½ sovereigns gold necklace from the defacto complainant, who is his neighbor, threatened at knife point and caused injuries. The petitioner/accused was red caught and handed over to the police. The defacto complainant lodged a complaint. FIR was registered in Crime No.440 of 2014 against the petitioner and P.W.12 - Inspector of Police did investigation and laid charge sheet against the petitioner. The petitioner was charged for the offence under section 394 of IPC.

(i) To prove the charge the prosecution examined 12 witnesses as P.W.1 to

P.W.12 and marked 7 exhibits Ex.P1 to Ex.P7. M.Os 1 and 2 were marked. On the
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defence side, three witnesses were examined as D.W.1 to D.W.3. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 394 of IPC and sentenced him to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of RS.2,000/-, in default, to undergo Rigorous Imprisonment for a period of two months by passing impugned judgment dated 04.10.2023.

3. Aggrieved by the conviction judgment, the accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the appeal.

4. Heard both sides and perused the records in this Criminal Appeal.

5. The learned counsel for the petitioner has submitted that the petitioner was charge sheeted under Section 397 of IPC, the Section 394 of IPC is not made out. The petitioner/accused and the defacto complainant are neighbours and there was money dispute between them. There is main contradiction between the contents of FIR and the evidence of PW2 about the seizure of material objects. The petitioner is the only bread winner of his family. The petitioner has a fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Additional Public Prosecutor would submit that the



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defacto complainant well knew about the accused, as he is neighbor. The petitioner/accused was caught red handed at the time of occurrence. P.W.4 and P.W.5 ocular witnesses, they deposed corroborating to the evidence of P.W.1/defacto complainant. The defence witnesses have not disproved the prosecution case, they examined to show that there was incident between the accused and P.W.2, though they have lodged a complaint the same was not produced and marked. The prosecution clearly proved seizure of material objects from the petitioner/accused. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein and thereby the accused was awarded sentence of imprisonment to 10 years. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner/accused and the defacto complainant/PW1 were residing in the same street. The occurrence took place at day time and the accused was caught red handed with material objects. This was not denied by the defense side. The trial Court came to conclusion based on the evidence of prosecution witnesses. The contention of the learned counsel for the petitioner raised in this petition that there was a money transaction between the accused and P.W.1 & P.W.2 and so he was



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falsely implicated in this case is a matter for consideration in the appeal. The petitioner is in jail for a short period from 04.10.2023 against the total period of sentence of 10 years. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, this Court is not inclined to suspend the sentence at this stage and also this is not a fit case to exercise the jurisdiction of suspense of sentence.

8.In the result, this Criminal Miscellaneous Petition stands dismissed.

sd/-
28/11/2023

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

VSD
TO

- 1 THE PRINCIPAL ASSISTANT
SESSIONS JUDGE, PALANI.
- 2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
PALANI TALUK POLICE STATION, PALANI,
DINDIGUL DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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+1 CC to M/s.V.KANNAN, Advocate (SR-16998[I] dated 28/11/2023)

ORDER
IN
CRL MP(MD) No.15424 of 2023
IN
CRL A(MD)No. 977 of 2023
Date :28/11/2023

PKP/SKN/SAR- /04.12.2023/ 6P/ 6C

Madurai Bench of Madras High Court is issuing certified
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