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CrI.M.P.No.640 of 2024
in CrI.R.C.No.80 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CrI.M.P.No.640 of 2024
in CrI.R.C.No.80 of 2024

Mohanraj

... Petitioner

Vs.

The State rep. by the
Inspector of Police,
Tiruchengode Rural Police Station,
Namakkal District.
(Crime No.384 of 2016).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397 r/w (1) of Code of Criminal Procedure, to suspend the sentence imposed in C.C.No.213 of 2018 dated 16.06.2023 by the learned Judicial Magistrate, Tiruchengode, Namakkal District and enlarge the petitioner on bail pending disposal of the above revision petition.

For Petitioner	:	Mr.S.Selvaraj
For Respondent	:	Mr.S.Rajakumar Additional Public Prosecutor



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ORDER

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This petition has been filed to suspend the sentence imposed on the petitioner in C.C.No.213 of 2018 dated 16.06.2023 by the learned Judicial Magistrate, Tiruchengode, Namakkal District and enlarge the petitioner on bail pending disposal of the above revision petition.

2. The petitioner has been convicted by the Trial Court in C.C.No.213 of 2018 for the offences under Sections 279, 337, 304(A) IPC and sentenced to undergo simple imprisonment for 2 years and to pay a fine of Rs.5,000/-. Challenging the same, the petitioner preferred an appeal before the Sessions Court. On 30.11.2023, the Sessions Judge, dismissed the appeal and confirmed the conviction and sentence passed by the Trial Court, as against which, the present Revision and suspension of sentence have been filed.

3. The case of the prosecution is that on 19.08.2016 at about 06.30 hours, the de-facto complainant namely Tr.Mani lodged a complaint before the respondent police stating that his son namely Thirunavukarasu/deceased was driving his TVS XL bearing Registration No.TN 34 H 442 towards



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Tiruchengode-Erode Main Road, to meet a thread merchant at Sooriyampalayam. While so on 18.08.2016 at about 17.45 hours, the deceased parked his vehicle for having tea at a Bakery. At that time, the petitioner who drove the Cheran Private Bus bearing Registration No.TN 34 V 6499 came at a high speed from Tiruchengode to Erode Road (East to West direction), in a rash and negligent manner on the right side and dashed against the said Thirunavukarasu and on his vehicle and thereby caused death of Thirunavukarasu/deceased. Further one Janani, who was travelling in the said bus also got injured on her right wrist and right leg, and sustained simple injuries. Hence, the complaint.

4. In order to prove the case of the prosecution, the prosecution examined 10 witnesses and marked 9 exhibits and no material objects have been marked. On the defence side, no witness was examined and no exhibits were marked. After conducting trial, the Judicial Magistrate, Tiruchengode convicted the petitioner for the above said offences. The appeal preferred by the petitioner was dismissed by the Lower Appellate Court, confirming the conviction and sentence of the Trial Court.



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5. The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case. In this case, the defacto complainant PW1 himself had admitted that he was not in the scene of occurrence and on hearing the occurrence only, he went to the place and came to know that the petitioner had dashed on his son and thereafter, he lodged a complaint. Further, PWs.2 and 3, who have been projected as eye witness to the occurrence, are close relatives of the deceased and they have not even identified the petitioner as the driver of the vehicle. Though the eye witness PW6, who is said to have injured in the accident, had taken treatment at Tiruchengode Government Hospital, she was not examined on the same day by the respondent police. Though PW6 stated that she also travelled in the bus driven by the petitioner, no travel ticket or any other documents have been produced to prove the same. The other witnesses in this case, viz., PW4, PW5, PW7 and PW8 are hearsay witnesses.

6. The learned counsel for the petitioner further submitted that the Motor Vehcile Inspection Report, Exs.P7 and P8 as well as the Post Mortem



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Report Ex.P6 were marked through the Investigating Officer PW10, instead of marking the same through the respective witnesses. He further submitted that the accident occurred due to the negligence of the deceased. The Trial Court as well as the Sessions Court failed to consider those facts and hence this petition may be allowed.

7. The learned counsel for the petitioner further submitted that the petitioner surrendered before the Judicial Magistrate, Trichengode and he is now confined in the Central Prison, Salem. The learned counsel for the petitioner produced a copy of the surrender petition and the order accepting the surrender passed by the Judicial Magistrate, Trichengode.

8. The learned Public Prosecutor submitted that on a complaint lodged by the defacto complainant stating that the petitioner dashed the Bus against the deceased and caused his death, a case was registered in Trichengode Rural Police Station in Crime No.384/2016, u/s. 279, 337, 304(A) of IPC. During the course of investigation, the Special Sub Inspector of Police went to the scene of occurrence, drew rough sketch, prepared



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observation mahazar and also examined the witnesses and recorded their statements. The petitioner was arrested on 19.08.2016 and on the same day released on Station Bail. Charge sheet was filed against the petitioner before the Judicial Magistrate, Tiruchengode and the same was taken cognizance in C.C.No.213 of 2018. Later, the petitioner surrendered before the Judicial Magistrate, Trichengode and he is now confined in the Central Prison, Salem.

9. On a perusal of records, it is seen that Post Mortem Report, Motor Vehicles Report and other documents were marked through the Investigating Officer and none of those documents were marked through the respective witnesses. Further, PW2 and PW3 are close relatives of the deceased, but they had not taken any steps to take the deceased to the Hospital. Thus the presence of PW2 and PW3 are highly doubtful and they have not even identified the petitioner as the driver of the vehicle. Therefore, there is no eye witness to the accident. Further, no one from the Transport Corporation was examined to prove that the petitioner had driven the vehicle and caused the accident. Injured eye witness PW6 had not



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given details about the accident to the Investigating Officer, who had visited the the Hospital immediately. These facts have not been considered by the Courts below.

10. The petitioner has already surrendered before the trial Court and now confined in prison. Further, taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

11. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Trichengode.



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(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if he is not able to appear before the Trial Court on that 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.

12. Accordingly, this Criminal Miscellaneous Petition is ordered.

05.03.2024
(2/3)

pvs

Note: Issue order copy on 06.03.2024



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To

1. II Additional District and Sessions Judge,
Namakkal.
2. The Judicial Magistrate, Tiruchengode,
Namakkal District
3. Inspector of Police,
Tiruchengode Rural Police Station,
Namakkal District.
4. The Public Prosecutor,
High Court, Madras.

Copy to

The Central Prison, Salem



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M. NIRMAL KUMAR., J.

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