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*Crl.M.P.No.1111 of 2024
in Crl.A.No.107 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.1111 of 2024
in
Crl.A.No.107 of 2024

Nagappan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
M-7 Manali New Town Police Station,
Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed in judgment dated 14.12.2023 passed in S.C.No.83 of 2020 on the file of the IV Additional Sessions Judge, Ponneri and enlarge the petitioner on bail pending disposal of the criminal appeal.



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For Petitioner : Mr.K.Thenrajan
For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned IV Additional Sessions Judge, Ponneri by judgment dated 14.12.2023 made in S.C.No.83 of 2020 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in S.C.No.83 of 2020 and sentenced to undergo five years imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment for the offences under 304(ii) IPC. Against which, the present appeal is filed along with suspension of sentence.



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3.The contention of the learned counsel for the petitioner is that in this case P.W.2/brother-in-law of the deceased is projected as eye witness.

P.W.2 states that he came to the scene of occurrence after seeing the crowd near the scene of occurrence and found his brother-in-law with injury. On enquiry, the injured brother-in-law is said to have disclosed the name of the petitioner. P.W.1/wife of the deceased also gives a version that the deceased informed her that the petitioner had assaulted him. He would submit that the occurrence took place in a public place but no public witnesses examined in this case for the alleged occurrence. Further, the case of the prosecution is that prior to attack there was a quarrel between the petitioner and the deceased, in which the petitioner took a wooden log and attacked the deceased. But the ocular evidence and the medical evidence are contradictory to each other. He further submitted that in this case the alleged occurrence took place at about 3.00 p.m, injured was taken to Akash Nursing Home and thereafter he was taken to Rajiv Gandhi Government Hospital at 10.00 p.m, but what is the treatment given between 4.00 p.m and 10.00 p.m., is not known and none examined. The victim in this case passed away two days after the alleged occurrence on 13.10.2018 and the complaint



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was lodged with a delay. He would further submit that the Trial Court substituting its views and convicting the petitioner which is contrary to the available evidence is not proper.

4.The learned Government Advocate (Crl. Side) filed his counter and submitted that the case of the prosecution is that the petitioner/accused and the deceased are relatives and they accompanied each other to drink alcohol. While so, on 10.10.2018 when the deceased and the petitioner went to Wine Shop to drink alcohol, at that time, there was a wordy quarrel between them, in which the petitioner abused the deceased in filthy language, assaulted him, kicked him with hands and legs and thereafter, assaulted him with knife. Thereafter, the victim was taken to a private hospital and thereafter to Rajiv Gandhi Government Hospital and later, he died. Hence, P.W.1/wife of the deceased lodged a complaint/Ex.P.1. P.W.13 received the complaint and registered FIR/Ex.P8 in Crime No.393 of 20185 for the offence under Sections 341, 294(b), 307 and 506(ii) IPC. Thereafter, P.W.14 took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch/Ex.P9 examined the witnesses and recorded their



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statements. Thereafter, the petitioner was arrested and confession statement recorded. P.W.10/Doctor treated the deceased and issued Accident Register/EX.P5. P.W.11/Doctor treated the deceased at Rajiv Gandhi Government Hospital and after his death, sent the body for post-mortem. P.W.12/Postmortem Doctor conducted postmortem and issued postmortem report/Ex.P13 and chemical analysis report. On completion of investigation, charge sheet filed before the Trial Court. Before the Trial Court, on the side of the prosecution, P.W.1 to P.W.14 marked, Ex.P1 to Ex.P15 and M.O.1 marked. On the side of the accused, no witnesses examined and no exhibits marked. On conclusion of trial, the Trial Court had rightly convicted the petitioner as stated above.

5.Considering the submissions made and on perusal of the materials, it is seen that the alleged occurrence took place at about 3.00 p.m., immediately the victim was taken to Akash Nursing Home by 4.00 p., and thereafter he was taken to Rajiv Gandhi Government Hospital at about 10.00 p.m., but what was the treatment given between 4.00 p.m and 10.00 p.m, there is no evidence. Added to it, the evidence of P.W.1 and P.W.2 is that



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the deceased had informed them that the petitioner had assaulted him. The occurrence is said to have taken place in a public place and admittedly P.W.1 and P.W.2 are not the eye witnesses but no other public witnesses examined. The ocular evidence and the medical evidence are contradictory to each other. In view of the same, the conviction of the petitioner needs re-look and re-consideration. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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 No.II, Ponneri.

7. Further, the petitioner shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he



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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.

8. Accordingly, this Miscellaneous Petition is ordered.

29.02.2024

cse

To

1. The Inspector of Police,
M-7 Manali New Town Police Station,
Chennai.
2. The Judicial Magistrate No.II,
Ponneri.
3. The IV Additional Sessions Judge,
Ponneri.
4. The Superintendent,
Central Prison, Puzhal,
Chennai.
5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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