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Crl.MP.No.2161/2024 in Crl.A.No.399/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.2161/2024

in

Crl.A.No.399/2023

Johnson

.. Petitioner

Versus

State rep by
The Inspector of Police,
Thiruvallur Taluk Police Station,
Thiruvallur District.
(Cr.No.1044 of 1996)

.. Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.08 of 2006 dated 01.11.2022 passed by the learned I Additional Sessions and District Judge, Tiruvallur District and enlarge the petitioner on bail pending disposal of C.A.No.399 of 2023 on the file of this Court.



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For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgement and order dated 01.11.2022 passed in S.C.No.08 of 2006 on the file of the learned I Additional Sessions and District Judge, Tiruvallur District, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that on 05.12.1996, the petitioner along with two others, hired a Maruthi van on the pretext of bringing a person from Tirutani to Chennai, that on the way near Tiruvallur - Tirutani road, they caused the death of the driver, they committed robbery of the Maruti van driven by the deceased and stole the wrist watch belonging to



the deceased.

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3. Heard the learned counsel for the petitioner and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.Learned counsel for the petitioner submitted that the petitioner was originally arrayed as A2 and he was tried separately as the case against him was split up; that A1 was convicted by the trial Court and A3 was acquitted, and that there is no recovery from A2 and there are no other circumstances against the petitioner; that P.W.6, who had spoken about the recovery of Maruthi van from A1 had also turned hostile; and that the owner of the car also was not examined by the prosecution, and hence, there are no circumstances against the petitioner. Hence, he prayed for suspension of sentence.

5.Learned Additional Public Prosecutor, per contra, submitted that the case has been established by the prosecution and prayed for dismissal of the petition for suspension of sentence.



6. We have carefully considered the submissions made on either side.

We find that, admittedly, as per the evidence of Investigating Officer, P.W.11, there was no recovery from the petitioner. P.W.6 who spoke about the recovery from A1, also had turned hostile. That apart, there are no other circumstances against the petitioner. *Prima facie*, we are convinced that the petitioner has fair chance of success in the appeal.

7. Considering the above facts and since the petitioner is in custody from 01.11.2022, and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned I Additional Sessions and District



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Judge,, Tiruvallur;

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- (ii)The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii)The petitioner shall appear before the trial Court on every Monday and Thursday at 10.30 a.m. until the disposal of the appeal 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 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.

[M.S.R.,J.] [S.M.,J.]
18.03.2024

Anu/ars

Issue order copy by 20.03.2024

Upload the order copy forthwith.

Internet: Yes



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M.S.RAMESH, J

and

SUNDER MOHAN, J

Anu

To

1.The I Additional Sessions and District Judge,
Tiruvallur.

2.The Inspector of Police,
Thiruvallur Taluk Police Station,
Thiruvallur District.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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18.03.2024