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Crl.MP.No.4897/2023 in Crl.A.No.380/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.4897/2023 in Crl.A.No.380/2023

Kangoji Rao

.. Petitioner

Versus

State by

The Arcod Village Circle Inspector of Police,

@ Walajahpet Police Station,

Ranipet District.

Cr.No.373/2016

.. Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.40 of 2018 on the file of the II Additional District and Sessions Court, Vellore District @ Ranipet by enlarging the petitioner on bail pending disposal of above Criminal Appeal.

For Petitioner : Mr.M.Rajkumar

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

ORDER



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[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 09.09.2022 passed in S.C.No.40 of 2018 on the file of the II Additional District and Sessions Court, Vellore District @ Ranipet, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the deceased and petitioner were close friends and were in the habit of consuming liquor together; that three months before the occurrence, when they were in an inebriated condition, there was a wordy quarrel between them; that petitioner assaulted the deceased with the Beer Bottle on the left side of the chest; that there was a compromise thereafter and that they continued their friendship; that on 17.09.2016 at about 20.00 hrs, when they were both consuming liquor in a public road, they assaulted each other; that pursuant to the said incident on 18.09.2016 at about 10.00 hrs, the deceased went to the house of the petitioner and questioned him about the previous day's incident and abused



his mother, who was arrayed as A2; that enraged by the said conduct of the deceased, A2 is said to have attacked the deceased with a wooden log and the petitioner is said to have stabbed the deceased on the left side of the stomach and left side of the chest with knife. Hence, a complaint was registered on 18.09.2016 in Cr.No.373 of 2016 for the offence punishable under Sections 324 and 306 IPC against the petitioner and his mother.

3. Heard the learned counsel for the petitioner [A1] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4. While considering the petition for suspension of sentence filed by A2, we made the following observations:

"6. (i) Though several grounds have been raised by the petitioner herein, the learned counsel for the petitioner submitted that the petitioner has been falsely implicated; that admittedly, the deceased and A1 were close friends and frequently quarrelled and thereafter continued their friendship; that the petitioner has nothing to do with the said quarrel; that in any case, the evidence discloses that



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the deceased was the aggressor and he came to attack the petitioner and AI in their house.

(ii) Further, the learned counsel submitted that when the deceased was first taken to the hospital, PW1 had stated that three people attacked the deceased and there was no investigation as to who were those three persons. That apart, the petitioner and her son went to the police station to lodge a complaint even before the PW1 lodged the complaint against them and that they have been falsely implicated. He further submitted that the petitioner is a lady aged about 55 years and is in custody from 09.09.2022 and prayed that the sentence imposed on the petitioner may be suspended.

7. The learned Additional Public Prosecutor per contra submitted that since the prosecution has proved its case beyond reasonable doubt and the evidence of PW1, the eye witness has not been discredited by the defence, there is no reason to disbelieve the evidence of PW1. Hence, he prayed for dismissal of the petition.

8. We have carefully considered the rival submissions. We are of the view that considering the fact



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that the occurrence took place at the house of the petitioner/A2, which suggests that the deceased was the aggressor and the statement of PW1 to the Doctor that three persons were involved, raises a doubt in the prosecution case. The involvement of the petitioner in the facts of the case appears to be highly doubtful."

5. The above observation would be applicable to the petitioner as well since P.W.1 had stated that three persons were involved, which is contrary to the prosecution case and there is no explanation by the prosecution. Further, the evidence on record also suggests that the deceased was the aggressor. The petitioner is in custody from 09.09.2022, and the appeal is not likely to be taken up in the near future. Hence, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

6. 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



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satisfaction of the learned Judicial Magistrate No.II, Walajapet;

(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 the first working day of every month 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.]
08.03.2024

Anu

Issue order copy by 11.03.2024

Upload the order copy forthwith.

Internet: Yes

To

1. The Judicial Magistrate No.II, Walajapet.

2. The Arcod Village Circle Inspector of Police,
@ Walajahpet Police Station,



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Ranipet District.

3.The Superintendent of Prison,
Central Prison, Vellore.

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

M.S.RAMESH, J

and

SUNDER MOHAN, J

Anu



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