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Crl.MP.No.5687 of 2024
in Crl.A.No387 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.5687 of 2024

in

Crl.A.No.387 of 2021

Baskaran

...Petitioner/Appellant/Accused (Single)

Versus

State represented by:

The Inspector of Police,
Kullanchavadi Police Station,
Cuddalore District.
(Crime No.03/2019)

...Respondent/Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389 [1] of the CrI.P.C., to suspend the sentence imposed on the petitioner/sole accused in S.C.No.192 of 2019 on 31.08.2020 on the file of the learned I Additional District and Sessions Judge, Cuddalore and enlarge the petitioner on bail pending disposal of the Criminal Appeal.



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For Petitioner : M/s.P.Manickavendhan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

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/sole accused by Judgment and order dated 31.08.2020 passed in S.C.No.192 of 2019 on the file of the learned I Additional District and Sessions Judge, Cuddalore, and to enlarge the petitioner on bail pending the disposal of the criminal appeal.

2. The petitioner, in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
302 of IPC	To undergo imprisonment for life and to pay a fine of Rs.3,000/- in default to undergo SI for six months.
506 (ii) of IPC	To undergo RI for two years and to pay a fine of Rs.500/- in default to undergo SI for two months.
Sentences were ordered to run concurrently.	



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3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present petition.

4. Heard Mr.P.Manickavendhan, the learned counsel for the petitioner and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the deceased, P.W.2 and the petitioner/sole accused were friends; that all of them consumed liquor and went in a car bearing Reg.No.TN 59 AC 0999; that the deceased was driving the car and while going in the car, the deceased scolded the petitioner in filthy language and infuriated by that act, the petitioner got down from the car, picked a wooden log and assaulted the deceased; that P.W.2 on seeing this, fled from the scene of the occurrence and thereafter, the petitioner threatened P.W.2 that he would kill him, if he disclosed this fact to anybody else; and hence, P.W.2 also consumed poison and attempted to end his life.



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6. The learned counsel for the petitioner/sole accused, submitted that the petitioner is in custody from 31.08.2020; that the prosecution rests on the evidence of P.W.2, eye witness and there are several infirmities in the evidence and in fact the FIR was lodged belatedly and despatched after the delay of more than 24 hours; and that the genesis and origin of the occurrence have been suppressed by the prosecution. Hence, he has a fair chance of success in the appeal and prayed for suspension of sentence.

7. The learned Additional Public Prosecutor, *per contra*, submitted that P.W.2's evidence is cogent and convincing and mere delay would not disbelieve his testimony; and that the Trial Court rightly convicted the petitioner. Hence, he prayed for dismissal of the petition

8. We have carefully considered the rival submissions and perused the records.



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9. On perusal of the record, it is seen that P.W.2 is the only eye witness relied upon by the prosecution. According to the prosecution, the petitioner, deceased, and P.W.2 were friends. It is P.W.2's version that all of them consumed liquor and the deceased asked P.W.2 to drive the car; that when P.W.2 refused to drive the car, the petitioner abused him in filthy language, which was objected to by the deceased; that thereafter the petitioner and the deceased entered into a wordy quarrel; that P.W.2, thereafter, drove the car and rammed it into a pile of wooden logs left on the side of a road; that the petitioner thereafter abused P.W.2 and the deceased and picked up a wooden log and assaulted the deceased. However, it is seen that P.W.2, thereafter, fled from the scene of the occurrence and did not inform anyone about the occurrence until P.W.1 (the son of the deceased) met him. The version of P.W.2 appears to be very artificial and inherently improbable. Moreover, the complaint was lodged belatedly by P.W.1 at 3.30 p.m., on 01.01.2019. The FIR was sent to the learned Magistrate only on 02.01.2019. The evidence of P.W.2 and the delay suggest that the prosecution has suppressed the genesis and origin of the occurrence, which would render the entire prosecution case doubtful. Hence, we are of the view



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that the petitioner has a fair chance of success in the above appeal. We hasten to add that it is an expression of our *prima facie* view.

10. Considering the above, the fact that the petitioner is in custody from 31.08.2020 and the fact that the appeal is not likely to be taken in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

11. 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 District and Sessions Judge, Cuddalore;

(ii) The petitioner shall stay at Villupuram and appear before the Villupuram Town Police Station once in a week i.e., on every monday at 10.30 a.m.,



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until further orders;

(iii) 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;

[M.S.R.,J.] [S.M.,J.]
05.07.2024

dk

Note: Issue order copy by 09.07.2024

Copy to:-

- 1.The I Additional District and Sessions Judge,
Cuddalore.
- 2.The Inspector of Police,
Kullanchavadi Police Station,
Cuddalore District.
- 3.The Superintendent of Prisons,
Central Prison Cuddalore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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