



*Crl.M.P.No.5262 of 2024
in Crl.A.No.344 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

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

Crl.M.P.No.5262 of 2024
in
Crl.A.No.344 of 2024

Madhar

... Petitioner/Accused

Vs.

State rep. by
The Inspector of Police,
K-2, Ayanavaram Police Station,
Chennai - 23.
(Crime No.131/2022)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentences of imprisonment passed by judgment dated 08.02.2024 in Sessions Case No.42 of 2023 on the file of the Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai – 600 003 and enlarge him on bail pending disposal of Crl.A.No.344 of 2024 filed before this Court.

For Petitioner : Mr.J.B.Solomon Peter Kamal Doss

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed on him by the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, dated 08.02.2024 in Sessions Case No.42 of 2023 till the disposal of above Criminal Appeal and enlarge the petitioner on bail.

2.The petitioner/accused in S.C.No.42 of 2023 was convicted by the Trial Court by judgment dated 12.02.2024 and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months simple imprisonment for the offence under Section 307 of I.P.C., to undergo seven years rigorous imprisonment and to pay fine of Rs.15,000/-, in default, to undergo three months simple imprisonment for offence under Section 326 of I.P.C. and to undergo seven years rigorous imprisonment and to pay fine of Rs.2,000/-, in default, to undergo three months simple imprisonment for offence under Section 506(ii) of I.P.C. All the sentences are directed to run concurrently. Aggrieved against the said judgment, he filed an appeal before this Court in Crl.A.No.344 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3.The case of the prosecution is that the petitioner and PW1 are husband and wife. They had strained relationship and got separated for the past three years and the petitioner is staying at Arakkonam and running a mutton shop there. The mother/PW1 and her daughter/PW3 are residing in Chennai. On 20.03.2020, PW1 scolded and beaten her daughter for the wrong she committed. The PW3 called her father/petitioner and informed the same. Thereafter, the petitioner came there, questioned PW1, picked up quarrel, abused her with filthy language, took the knife from his waist and attempted to kill her. PW1 escaped and ran outside at that time the petitioner inflicted injury on her neck. PW2, a neighbour tied kerchief to stop the bleeding of PW1, which was questioned by the petitioner and he attacked PW2 on his left shoulder and left stomach. Both PW1 and PW2 were taken to Kilpauk Medical College hospital, from where information was sent to the respondent, who came there, registered a complaint and on conclusion of investigation, charge sheet filed.

4.During trial, on the side of the prosecution, PW1 to PW11 examined, marked Exs.P1 to P14 and marked M.O.1. and M.O.2. On the side of the defence no witnesses examined and marked Ex.D1. On conclusion of the



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trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

5.The contention of the learned counsel for petitioner is that in this case the eyewitnesses projected are PW4, PW5, PW6 and PW7, of which, except PW6, other three witnesses not supported the case of the prosecution. PW1 is the wife with whom the petitioner has no cordial relationship, they got separated. PW3 is the daughter of PW1 and petitioner. She is under the guardianship of PW1. PW2 is the neighbour, who gave exaggerated version. The Doctors/PW8 and PW9, who treated PW1 and PW2 had stated that the injury sustained by PW1 is simple in nature. As regards PW2 it is on non vital part. The case of the prosecution is that the petitioner using pen knife inflicted injury on PW1. In a spur of movement entire thing happened. Earlier to it, there was a matrimonial discord between the petitioner and PW1. On the plea of PW3, the petitioner had come there. The entire incident happened due to sudden provocation and not with any premeditation. The commission of offence by the petitioner under Section 307 I.P.C. and other offences that too seven years sentence needs reconsideration. He Further submitted that the petitioner has arguable points and fair chance to succeed in this appeal.

Hence, he prays for granting suspension of sentence to the petitioner.



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6.The learned Government Advocate (Crl. Side) filed his counter and submitted that based on the above complaint, a case was registered in K-2, Ayanavaram Police Station in Crime No.131 of 2022, for offence under Sections 294 (b), 324, 307, 506(ii) of I.P.C. against the accused and submit the same before the then Inspector of Police for further investigation and accused was arrested on 21.03.2022 at about 13.00 hours. He further submitted that during course of investigation, the then Inspector of Police went to the scene of occurrence, drew rough sketch, prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements. He further submitted that during trial, the prosecution has examined 11 witnesses and marked 14 exhibits and identified 2 material objects. On the side of the defence Ex.D1 marked.



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PROSECUTION SIDE WITNESSES :-		
P.W. 1	Tmt.Sharfunisha/De-facto Complainant/Injured witness	Speaks about the occurrence and lodged a complaint before the respondent police station. [Ex.P.1]
P.W.2	Tr.Manikandan/Injured witness	Corroborates the same version of P.W.1
P.W.3	Selvi.Thasleem/Daughter of the complainant.	Corroborates the same version of P.W.1
P.W.4	Tmt.Mariammal	Corroborates the same version of P.W.1
P.W.5	Tr.Sureshkumar	Deposed that he saw the injured Tr.Manikandan coming with injuries and took him in an auto to the KMC Hospital.
P.W.6	Tr.Ragu	Attested in observation mahazar [Ex.P.3]
P.W.7	Tr.Murugesan	Attested in confession statement of accused [Ex.P.4] and Seizure mahazar [Ex.P.5]
P.W.8	Dr.Ramprasad	Issued wound certificates [Ex.P.6 & Ex.P.7]
P.W.9	Dr.Gopinath	Issued Accident Registers [Ex.P.8 & Ex.P.9]



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P.W.10	Tr.Murugesan, Inspector of Police	He taken up for further investigation. He went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses. He have arrested the accused and remanded to judicial custody. After completed the investigation he have filed a charge sheet before the competent court in accordance with law.
P.W.11	Tr.Ramesh, Sub Inspector of Police	Deposed that he received complaint from P.W.1 and registered in Crime No.131 of 2022, U/s. 294(b), 324, 307, 506(ii) IPC [Ex.P.10] and submit the same before P.W.10 for further investigation.



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7.He further submitted that it is contented on the side of the prosecution that due to matrimonial dispute the accused with the intention to commit murder had come to the place of occurrence armed with knife and attacked P.W.1 and when he was restrained by P.W.2 he was also attacked him and caused grievous injuries. Therefore it is submitted that there is clear motive to cause death of P.W.1 and thereby he has committed the offences as charged. Hence, prays for dismissal of the petition.

8.Considering the submissions made and on perusal of the materials, it is seen that PW3 called her father/petitioner, complaining that her mother/PW1 scolded and beaten her. On hearing the plea of his daughter, the petitioner came from Arakkonam to enquire PW1 about the same. At that time, there were heated arguments and in a spur of movement, the petitioner had taken a pen knife and inflicted injury. The injury sustained by PW1 is simple in nature as seen from Doctor's evidence. As regards PW2, the injury is on non vital part. PW2 intervened during heated arguments and fight between the husband and wife, who had strained relationship and PW3 is under the care of PW1. The conviction of the petitioner under Section 307 of I.P.C. needs reconsideration in view of medical evidence. Further taking note



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of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

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

(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 V Metropolitan Magistrate, Egmore, Chennai.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Sessions Judge 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 on the first working day of every English Calendar 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 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



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in lieu of the date of his absence as directed by the
Trial Court.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.

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Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral citation : Yes/No
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To

- 1.The Inspector of Police,
K-2, Ayanavaram Police Station,
Chennai - 23.
- 2.The Sessions Judge,
Mahalir Neethimandram,
Allikulam, Chennai.
- 3.The V Metropolitan Magistrate,
Egmore, Chennai.



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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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