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CrLMP.No.7406 of 2024
in CrL.A.No.1101 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrL.MP.No.7406 of 2024
in
CrL.A.No.1101 of 2022

Kannan

...Petitioner/Appellant/single accused

Versus

State Rep. by
The Inspector of Police,
Dusi Police Station,
Dusi,
Tiruvannamalai District
(Crime No.377/2006, 378/2006, 379/2006)

...Respondent/Respondent

Prayer:- Criminal Miscellaneous Petition filed under Section 389 [1] of the CrL.P.C., 1973, to suspend the sentence imposed on the petitioner/single accused passed by the learned Additional District and Sessions Judge, Arani, Tiruvannamalai District in S.C.No.232 of 2007, dated 04.12.2019 against



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the petitioner and enlarge him on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.V.Rajamohan

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 by Judgment and order dated 04.12.2019 passed in S.C.No.232 of 2007 on the file of the learned Additional District and Sessions Judge, Arani, Tiruvannamalai District, 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:



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Offence under Section	Sentence imposed
302 (2 counts) of IPC	To undergo life imprisonment for each count and to pay a fine of Rs.10,000/- for each count in default to undergo rigorous imprisonment for 6 months.
201 (2 counts) of IPC	To undergo one year rigorous imprisonment for each count and to pay a fine of Rs.1,000/- for each count in default to undergo rigorous imprisonment for further period of three months.
Both sentences shall run concurrently	

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.V.Rajamohan, the learned counsel for the petitioner and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.



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5. The case of the prosecution is that the deceased was married to one Settu and had three children; that the deceased had an estranged relationship with her husband; and that thereafter she developed an affair with the petitioner; that after some time, she again developed an illicit relationship with one Jambu; that as a result of which, the petitioner got infuriated and took the child of the deceased from her parent's house; that on 19.07.2006, when the deceased came to take her child, a wordy altercation took place between them and the deceased abused the petitioner and kicked him; that thereafter, the petitioner herein took a knife and assaulted on her neck and face; that subsequently, the petitioner also took the child of the deceased and caused the death of the child. A complaint was lodged by the Village Administrative Officer on 21.07.2006 after he saw a headless body of a woman floating in a well.

6. The learned counsel for the petitioner submitted that the prosecution relies upon the evidence of P.W.2 as an eye witness and her evidence is highly doubtful; and that the petitioner is in custody from 04.12.2019 and prayed for suspension of sentence.



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7. The learned Additional Public Prosecutor *per contra* submitted that the evidence of P.W.2 is conclusive and therefore, the trial Court was right in convicting the petitioner and prayed for dismissal of the petition.

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

9. Admittedly, the petitioner is in custody from 04.12.2019. P.W.2 is the only eye witness. She would state that after witnessing the occurrence, she did not lodge any complaint about the incident. Her statement under Section 161 Cr.P.C. was recorded three days after the occurrence. The complaint was lodged by the Village Administrative Officer on finding the body of the deceased. Therefore, we are of the *prima facie* view that the prosecution case that P.W.2 is an eyewitness, is doubtful and the petitioner has a fair chance of success in the appeal.



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10. Considering the above and the fact that the petitioner is in custody from 04.12.2019 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.

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 Judicial Magistrate, Cheyyar;

(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



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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.]
28.06.2024

Anu

Note: Issue order copy by 02.07.2024

Copy to:-

- 1.The Judicial Magistrate,
Cheyyar.
- 2.The Inspector of Police,
Dusi Police Station,
Dusi,
Tiruvannamalai District
- 3.The Superintendent of Prisons,
Central prison, Vellore
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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