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Crl.MP.Nos.7537 & 11878 of 2023
in Crl.A.Nos.608 & 839 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.Nos.7537 & 11878 of 2023
in Crl.A.Nos.608 & 839 of 2023

P. Kuppa @ Kuppan

...Petitioner in Crl.M.P. No.7537/2023

M. Palanivel

...Petitioner in Crl.M.P. No.11878/2023

Vs.

State Rep. by

The Inspector of Police,

H-5, New Washermanpet Police Station, Chennai

(Cr.No.555/2014)

... Respondent in both the petitions.

Common Prayer :- Criminal Miscellaneous Petitions filed under Section 389(1) of Cr.P.C. praying to suspend the sentence of imprisonment passed by judgment dated 09.03.2023 in S.C. No.76/2015 on the file of the learned IV Additional Sessions Court, Chennai, and to enlarge the petitioners on bail pending disposal of the above appeals.

In both petitions

For Petitioner : Mr.T.R.Sivaram

For Respondent : Mr.E. Raj Thilak

Additional Public Prosecutor



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ORDER

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(Order of the Court was delivered by **SUNDER MOHAN, J.**)

The present Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed on the petitioners (A2 & A3), by the learned IV Additional Sessions Judge, City Civil Court, Chennai, in S.C. No. 76 of 2015, by the judgment dated 09.03.2023, and to enlarge them on bail pending disposal of the above Criminal Appeals.

2.The learned IV Additional Sessions Judge, City Civil Court, Chennai, in S.C. No. 76 of 2015, convicted the petitioners herein/A2 & A3 and sentenced them as follows:

Accused	Offence	Sentence Imposed
A2	302 r/w 34 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- , in default, to undergo six months Simple imprisonment.
A3	302 r/w 34 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple imprisonment.



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3.Challenging the above conviction and sentence, the petitioners/A2 &A3, have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present miscellaneous petitions.

4. Heard Mr.T.R.Sivaram, learned Counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. It is the case of the prosecution that on 27.04.2014 the deceased came in an inebriated mood to his house and slashed the alcohol bottle on the wall; that since the glass pieces scattered and fell on the accused A1, a wordy quarrel arose between the deceased and A1; that the mother of the deceased pacified them; and that on account of the said scuffle, the accused had grudge over the deceased. Consequently, on 27.04.2014, at about 21.30 hours when the deceased was talking to his mother, the accused asked the deceased to come out of the house and that the mother of the deceased asked the accused to talk with the deceased in her presence. By that time the petitioner (A3) in Crl.M.P. No.11878 of 2023 caught hold of the deceased on his back and the petitioner (A2) in



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Crl.M.P.No.7537 of 2023 and A4 caught hold of the deceased and A1 took the knife and stabbed in the stomach of the deceased. It is also represented that A1 died during the trial.

6. The learned counsel for the petitioner submitted that all the eye witnesses to the occurrence turned hostile, except for P.W.1. P.W.6 who speaks about the motive did not speak about the occurrence. P.W.1, during the cross examination, had admitted that Ex.P1 complaint was not given by her and that the accused were not known to her.

7. The learned Additional Public Prosecutor, per contra, submitted that the case of the prosecution is proved beyond reasonable doubt. The cross examination of P.W.1 was conducted 7 years after the chief examination and P.W.1 was won over by the accused. Therefore, the Trial Court had rightly convicted the petitioners for the offences charged against them.

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



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records. All the eye witnesses, except P.W.1 turned hostile. P.W.1, the mother of the victim, had disowned Ex.P1 complaint. In the cross examination she had stated that her deposition in chief was based on the information given by some third persons and she had not witnessed the occurrence. She had also stated that the accused were not known to her. We find that the prosecution had not treated this witness as hostile and cross examined this witness. Therefore, merely because the cross examination was conducted 7 years later, we cannot ignore her version in the cross examination.

9. For the aforesaid reasons, we are of the view that the petitioners have a fair chance of succeeding in the appeals and since the present appeals are not likely to be taken up for hearing in the near future, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned XV Metropolitan Magistrate, George Town, Chennai.
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court



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may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeals and if they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court.

(M.S.R., J.) (S.M., J.)
11.01.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 12.01.2024
Upload the order copy forthwith

To

1. XV Metropolitan Magistrate, George Town, Chennai.

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2. State Rep. by

The Inspector of Police,
H-5, New Washermanpet Police Station, Chennai
(Cr.No.555/2014)

3.The Superintendent,
Central Prison, Puzhal



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and
SUNDER MOHAN, J.

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