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Crl.MP.No.7489/2023 in Crl.A.No.582/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.7489/2023 in Crl.A.No.582/2023

Prakash @ Anila

.. Petitioner/Accused

Versus

State by
Inspector of Police,
Katpadi Police Station,
Vellore District.
(Cr.No.288/2016)

..Respondent/Complainant

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in S.C.No.141 of 2016, on the file of the learned Additional District and Sessions Judge [FTC], Vellore, by judgment dated 07.03.2019, till the disposal of the above mentioned appeal.

For Petitioner : Mr.E.V.Chandru @ E.Chandrasekaran

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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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 vide judgement and order dated 07.03.2019 passed in S.C.No.141 of 2016 on the file of the learned Additional District and Sessions Judge [FTC], Vellore, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in the above Sessions Case, was convicted for the offence under Section 302 (2 counts) of the IPC and for each count, sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for a further period of one year. The sentences were ordered to run concurrently.

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



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4. Heard 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 petitioner is deaf and dumb and his wife was also deaf and dumb; that they were staying near a temple and were cleaning the temple and doing errand jobs in the temple; that they had a six month-old baby; that on 04.05.2016, the complainant-PW1, saw the petitioner attacking the deceased with a stone, as a result of which, the deceased sustained bleeding injuries and was in a serious condition; that the child was already lying unconscious and on checking, he came to know that the child was dead; and that after the deceased and the child were admitted in the hospital, the doctor declared both of them were dead.

6. (i) The learned counsel for the petitioner submitted that there is no evidence to show that the petitioner had caused the death of the child, as even according to the eyewitnesses, PW1 and PW2, who were working as



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'Trackman' at Katpadi Railway Station, when they saw the attack, the child was already lying unconscious; that the evidence of eyewitnesses in any case does not inspire confidence; and that the petitioner is in custody from the date of arrest, i.e., from 05.05.2016 till date.

(ii) The learned counsel for the petitioner further submitted that the nature of injuries, the evidence of eyewitnesses and the other circumstances, even if accepted to be true, would only suggest that the petitioner had committed culpable homicide not amounting to murder and hence, prayed for suspension of sentence.

7. Learned Additional Public Prosecutor, *per contra*, submitted that the petitioner hails from Bihar and therefore, he has no permanent residence in Tamilnadu and if the sentence imposed upon him is suspended, he would not be available, if his appeal is dismissed; that the trial Court had considered the evidence of witnesses and found that they are reliable; that during the questioning under Section 313 of the Cr.P.C., the petitioner admitted the commission of the crime; and that the trial Court was right in



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convicting the petitioner and prayed for dismissal of the petition for suspension of sentence.

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

9. Admittedly the petitioner is in custody from 05.05.2016. Though, the petitioner was convicted on 07.03.2019, he had preferred the appeal only in the year 2023. The nature of the evidence let in by the prosecution and the *overt acts* attributed to the petitioner, even if accepted to be true, it has to be considered whether his acts would constitute the offence of murder or the offence of culpable homicide.

10. Further, the petitioner is in custody for more than eight years. The Hon'ble Supreme Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and Another***, reported in **2022 LiveLaw (SC) 577**, while considering the scope of Section 389 of the Cr.P.C., has held as follows:

“43. A suspension of sentence is an act of keeping the sentence in abeyance, pending the final adjudication. Though delay in taking up the main



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appeal would certainly be a factor and the benefit available under Section 436A would also be considered, the Courts will have to see the relevant factors including the conviction rendered by the trial court. When it is so apparent that the appeals are not likely to be taken up and disposed of, then the delay would certainly be a factor in favour of the appellant.

44. Thus, we hold that the delay in taking up the main appeal or revision coupled with the benefit conferred under Section 436A of the Code among other factors ought to be considered for a favourable release on bail.”

The above observations are self-explanatory and considering the fact that the petitioner is in custody for more than eight years and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence imposed upon him. However, taking note of the objection raised by the learned Additional Public Prosecutor, we deem it appropriate to suspend the sentence imposed on the petitioner, on stringent conditions.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner alone is **suspended** on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two independent sureties, out of which one should be a local surety and each for a like sum to the satisfaction of the



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learned Additional District and Sessions Judge [FTC], Vellore;

- (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 once in a week i.e., on every Monday 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.
- (iv) This order of suspension shall be subject to payment of fine imposed on the petitioner by the Trial Court in the Judgement.

[M.S.R.,J.] [S.M.,J.]
01.08.2024

ars

Issue order copy by 02.08.2024



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Upload the order copy forthwith.

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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

1.The Additional District and Sessions Judge [FTC],
Vellore.

2.The Inspector of Police,
Katpadi Police Station,
Vellore District.

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

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

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