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Crl.MP.No.6922 of 2023
in Crl.A.No.1167 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.6922 of 2023

in

Crl.A.No.1167 of 2022

Nethaji Subash Chandra Bose

...Petitioner/Appellant No.1

Versus

State Rep. by
The Inspector of Police,
Cuddalore O.T. Police Station,
Cuddalore District.
Crime No.524 of 2012

...Respondent/Respondent

Prayer:- Criminal Miscellaneous Petition filed under Section 389 [1] of the CrI.P.C., 1973, to suspend the sentence imposed on the petitioner/appellant -1 in S.C.No.122 of 2013 on 30.09.2022 on the file of the learned 1st Additional District and Sessions Judge (FAC), at Cuddalore and enlarge the petitioner on bail pending the disposal of the Criminal Appeal.

For Petitioner : Mr.K.Gandhi Kumar
For Respondent : Mr.A. Gokulakrishnan
Additional Public Prosecutor

ORDER



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[Order of the Court was made by SUNDER MOHAN, J.]

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This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by Judgment and order dated 30.09.2022 passed in S.C.No.122 of 2013 on the file of the learned 1st Additional District and Sessions Judge (FAC), at 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
294-b of IPC	To undergo three months of simple imprisonment
302 of IPC	To undergo imprisonment for life with a fine of Rs.1,000/- in default to undergo simple imprisonment of one year.
Both sentences shall 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.K.Gandhi Kumar, the learned counsel for the petitioner and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution is that the deceased and the complainant/P.W.1 are brothers; that accused A1 and A2 are brothers; that A3 is the uncle of A1 and A2; that the deceased and A3 are neighbours; that on 20.08.2012 at about 8.00 p.m., when one Pandiyan, the brother of the deceased, was sitting outside a temple, the petitioner/A1 and A2 abused him in obscene language and kicked him on his chest, and when the deceased questioned the accused, A1 said to have stabbed the deceased with a knife on the left abdomen, as a result of which the deceased died one week later.

6. The learned counsel for the petitioner submitted that the presence of



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P.W.1 is highly doubtful; that the motive alleged by the prosecution has not been established since Mr.Pandiyan, the brother of the deceased, was not examined; and that the nature of the injury would suggest that the petitioner did not have any intention to cause the death of the deceased and prayed for suspension of sentence.

7. The learned Additional Public Prosecutor *per contra* submitted that the case has been established by the evidence of P.W.1 and P.W.5, eyewitness to the occurrence, and the other evidence on record; that there is no infirmity in the finding of the trial court, and prayed for dismissal of the petition.

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

9. Though it is the case of the prosecution that an earlier incident of A1 and A2 abusing one Pandiyan, the brother of the deceased, triggered the occurrence, the prosecution had not examined the said Pandiyan. Though P.W.1 claimed that he suffered an injury while trying to avoid an



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attack, the Accident Register [Ex.P3] suggests that there was no injury.

The presence of P.W.1 *prima facie* appears to be doubtful. That apart, it is the evidence of P.W.3, the doctor, that the deceased died due to *septicemia* due to the internal injuries. The deceased died one week after the occurrence. In such circumstances, it has to be examined whether the petitioner intended to cause death, even if eyewitnesses are believed.

10. Considering the above and the fact that the petitioner is in custody from 30.09.2022 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 I



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Additional District and Sessions Judge, (FAC)
Cuddalore;

(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 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.]
27.06.2024

dk

Note: Issue order copy by 02.07.2024

Copy to:-

1.The I Additional District and Sessions Judge (FAC),
Cuddalore.



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2.The Inspector of Police,
Cuddalore O.T. 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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SUNDER MOHAN, J
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