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*Crl.M.P.No.11568 of 2024
in Crl.R.C.No.1052 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.11568 of 2024 in
Crl.R.C.No.1052 of 2024

Shivakumar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
H-5 New Washermanpet Police Station,
Chennai District - 81
(Crime No.28/2018).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in S.C.No.461 of 2018 dated 29.03.2023 on the file of the learned VI Additional Sessions Judge, Chennai and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

For Petitioner : Mr.S.Manoharan

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

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The petitioner/accused in S.C.No.461 of 2018 was convicted by the Trial Court by judgment dated 29.03.2023 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment for the offence under Section 307 IPC, to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment for the offence under Section 506(ii) IPC and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 294(b) IPC. Aggrieved against the same, the petitioner preferred the present criminal appeal and suspension of the sentence.

2.The contention of the learned counsel for the petitioner is that the petitioner and the defacto complainant/P.W.1 were neighbours and it was the defacto complainant, who called the petitioner, gave a party in lieu of his daughter attaining puberty. During the drinks party, there was some dispute and the petitioner attempted to attack the defacto complainant but he escaped from the attack and came home. The petitioner is said to have followed the



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defacto complainant, called the wife of the defacto complainant, shouted at her and thereafter, attacked the defacto complainant with knife, causing injury on stomach and fingers. Thereafter, the defacto complainant was taken to hospital and given treatment. He would submit that in this case, the alleged attack is said to have taken place outside the house and no public witness examined. There was some dispute between the neighbours in collecting water and for other issues, which has been blown out of proportion and a case of attempt to murder has been projected. He would further submit that the knife is also not exclusive one and commonly available. Further, the Doctor who treated the defacto complainant, given the certificate that the injuries are simple in nature. But the Trial Court convicted the petitioner for the offence under Sections 307 and 506(ii) IPC on the available evidence and materials, from which it is clear that the conviction may not be sustainable. He further submitted that the petitioner is married, he is sole breadwinner of the family and due to his incarceration, his family is denied of his income. Hence, prays for suspension of sentence.

3.The learned Additional Public Prosecutor appearing for the



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respondent Police filed his counter and submitted that the defacto complainant and the petitioner were neighbours. The defacto complainant hosted a drinks party to the petitioner and his friends, at that time, there was some fight between them and not stopping with that, the petitioner followed the defacto complainant to his residence, knocked the door, called him out and thereafter, attacked him with knife and caused stab injuries on his stomach, attempted to cut him on his neck, luckily the defacto complainant escaped and sustained injuries on his hands. On receipt of complaint/Ex.P1 from the defacto complainant, P.W.7 registered FIR/Ex.P5 and thereafter, P.W.8 took up further investigation. P.W.8 visited the scene of occurrence, prepared observation mahazar/Ex.P3, rough sketch/Ex.P6, enquired the witnesses present and recorded their statements. P.W.4 is the Doctor who treated the defacto complainant and confirmed the injuries. P.W.5 is the Doctor who conducted surgery to the defacto complainant and issued wound certificate/Ex.P3. On completion of investigation, charge sheet filed. During the trial, P.W.1 to P.W.8 examined, Ex.P1 to Ex.P9 and M.O.1 marked on the side of the prosecution and on the side of the defence, no witness examined and no documents marked. On conclusion of trial, the



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Trial Court had rightly convicted and sentenced the petitioner as stated above. Hence, prayed for dismissal.

4.Considering the submissions and on perusal of the materials, it is seen that the injuries sustained by the defacto complainant are laceration injuries and not deep injury. The petitioner and the defacto complainant are neighbours, it is the defacto complainant who took the petitioner for a party and they consumed liquor. In an intoxicated condition, they picked up quarrel with each other and the alleged occurrence took place, it is not a pre-meditated and a planned one. Further, the knife used in the alleged occurrence is a common one and of flimsy nature. Further, the Doctor confirmed that the injuries sustained by the defacto complainant are of simple in nature on non-vital part. Hence, this Court finds that the conviction and sentence imposed by the Trial Court for the offence under Sections 307 and 506(ii) IPC needs re-consideration.

5.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he



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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 trial Court.

6.Further, the petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal 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 in lieu of the date of his absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

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Note: Issue order copy on 06.09.2024



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To

1.The Inspector of Police,
H-5 New Washermanpet Police Station,
Chennai District - 81

2.The VI Additional Sessions Judge,
Chennai.

3.The Superitendent,
Central Prison,
Puzhal-I.

4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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