



WEB COPY



CrLMP.No.15429/2022 in CrL.A.No.1117/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrLMP.No.15429/2022 in CrL.A.No.1117/2022

Kamaraj

..

Petitioner

Versus

State rep. by
The Inspector of Police,
Nannilam Police Station,
Nannilam, Tiruvarur District.

..

Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 374(2) Cr.P.C.,
to suspend the sentence imposed by the learned Principal District and
Sessions Judge, Tiruvarur in S.C.No.24/2019 dated 05.02.2021 and enlarge
the petitioner on bail.



CrLMP.No.15429/2022 in CrL.A.No.1117/2022

For Petitioner : Mr.C.Samivel

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

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 05.02.2021 passed in S.C.No.24 of 2019 on the file of the learned Principal District and Sessions Judge, Tiruvarur and to enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that the deceased and the petitioner are brothers; and that the petitioner and his wife were lying in the pathway when the deceased wanted to go to his house at around 1.15 a.m. on 30.05.2018, which resulted in a wordy quarrel and both of them assaulted each other. Thereafter, the petitioner allegedly poured kerosene over the deceased and set fire on him. Subsequently, the deceased was taken to the



CrLMP.No.15429/2022 in CrL.A.No.1117/2022

WEB COPY

hospital and he died on 05.06.2018 due to the burn injuries suffered by him.

3.Heard the learned counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

4.Learned counsel for the petitioner submitted that the Ex.P1, the complaint lodged by the deceased and Ex.P11, the dying declaration given to the learned Magistrate are contrary to each other. That apart, the dying declaration only suggests that there was a sudden quarrel between the two and there was no premeditation or motive for the petitioner to cause the death of the deceased. Further, Ex.P9, the accident register reveals that the deceased suffered burns due to self immolation under the influence of alcohol.

5. Learned Additional Public Prosecutor, per contra, submitted that the deceased has given an explanation for the entire in the accident register and had stated that it was the petitioner who said so before the doctor in the



CrLMP.No.15429/2022 in CrL.A.No.1117/2022

complaint, Ex.P1. The 2 dying declarations namely Ex.P1 and Ex.P11 are consistent and corroborate each other and establish the prosecution case beyond reasonable doubt and prayed for dismissal of the petition.

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

7. The petitioner is in custody from 05.02.2021. The accident register, Ex.P9, discloses that the deceased was taken to the hospital by one Ayyapan, who was examined as P.W.1 and turned hostile. The entries in the accident register further state that the burns were due to self immolation. It is seen that this version is contrary to the prosecution case. At the time of admission to the hospital (i.e) at 1.40 a.m., on 30.05.2018, the deceased was drowsy and disoriented as he had suffered 63% burns. Thus, the voluntariness and truthfulness of the two dying declarations, Ex.P1 and Ex.P11, recorded an hour later, are doubtful. We hasten to add that this is only our *prima facie* view.



CrLMP.No.15429/2022 in CrL.A.No.1117/2022

8. However, considering the above facts and the petitioner has been in custody since 05.02.2021, 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.

9. 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 Principal & District Judge, Tiruvarur;
- (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



CrLMP.No.15429/2022 in CrL.A.No.1117/2022

WEB COPY

(iii)The petitioner shall appear before the trial Court weekly twice i.e., on every Monday and Thursday 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.]
05.03.2024

Anu

Issue order copy by 06.03.2024

Upload the order copy forthwith.

Internet: Yes

To

1.The Principal & District Judge, Tiruvarur

2.The Inspector of Police,
Nannilam Police Station,
Nannilam, Tiruvarur District.

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

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



WEB COPY



CrI.MP.No.15429/2022 in CrI.A.No.1117/2022

M.S.RAMESH, J

and

SUNDER MOHAN, J

Anu

CrI.MP.No.15429/2022 in CrI.A.No.1117/2022

05.03.2024