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Crl.MP.No.14635 of 2023
in Crl.A.No.850 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.14635 of 2023

in

Crl.A.No.850 of 2023

Aarrif Bhasa

...Petitioner

Versus

1.The Deputy Superintendent of Police
Tindivanam Sub Division,
Tindivanam.

2.The Inspector of Police,
Roshanai Police Station,
Villupuram.

3. Kannan

...Respondents

Prayer:- Criminal Miscellaneous Petition filed under Section 389 [1] of Crl.P.C. to suspend the sentence imposed by Judgment dated 28.06.2023 in S.C.No.104 of 2015 on the file of the learned Judge of Sessions/Special



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Court for Exclusive Trial of cases registered under SC/ST (Prevention of atrocities) Act, 1989 Villupuram District and release the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.M.Mohamed Riyaz
for
Mr.A.Kalaiazahan

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/first accused by judgment and order dated 28.06.2023 passed in SC No.104 of 2015 on the file of the Sessions/Special Court for Exclusive Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram District.



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2. The petitioner/first accused in the above Sessions Case, was convicted and sentenced as follows :

Offence under Section	Sentence imposed
302 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for three years.

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

4. Heard Mr.M.Mohamed Riyaz, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution is that on 02.05.2010 at about 8.45 p.m., the deceased had gone to take dinner in the Hotel run by the accused; that since the deceased was aggrieved by the quality of food, there was a wordy quarrel between the deceased and the accused, as a result of which the petitioner/first accused is said to have instigated the second accused, who took a knife and assaulted the deceased in the head and



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thereafter, attacked with an iron pipe; that the third accused is said to have attacked the deceased with wooden log; that the fourth accused is said to have assaulted with a knife in the backside of the head of the deceased; that the accused nos.5 to 9 have also assaulted the deceased and the deceased succumbed to the injuries.

6.(i) Mr.M.Mohamed Riyaz, the learned counsel for the petitioner/first accused submitted that the evidence of chance witnesses [P.W.1 and P.W.2] is unbelievable; P.W.1 had admitted the presence of the police at the scene of the occurrence at 9.00 p.m. whereas, the FIR is said to have been registered on 1.30 a.m., the next day; that the Sub Inspector of Police, (P.W.36) who recorded the FIR had stated that he went to the scene of occurrence at about 7.30 p.m., the deceased was found near a tree, which is contrary to the prosecution case and therefore the genesis and the origin of the occurrence have been suppressed by the prosecution; that since the FIR was lodged belatedly and has been lodged after deliberation, the entire fabric of the prosecution case would collapse.



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(ii) The learned counsel further pointed out that the accused had lodged a complaint against the deceased, P.W.1 and P.W.2, the details of which was not placed before the Court in violation of the Police Standing Orders; and that the petitioner/first accused is suffering from coronary artery disease. Hence, he prayed for suspension of sentence for the petitioner.

7. Mr.E.Raj Thilak, the learned Additional Public Prosecutor, *per contra* submitted that the evidence of eye witnesses were cogent and convincing and merely because P.W.1 had stated that the police were present in the scene of occurrence, their versions cannot be disbelieved. He further submitted that the petitioner has not made out any case for suspension of sentence.

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

9. P.W.1 had admitted in his evidence that the police were present at the scene of occurrence at 9.00 p.m. on 02.05.2010. This is confirmed by the evidence of P.W.36, who would state that he went to the scene of the



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occurrence at 7.30 p.m, on 02.05.2010 and that he saw the deceased lying near a tree which is contrary to the prosecution case. According to the prosecution, the FIR was registered at 1.30 a.m. on the next day [03.05.2010]. It is further the case of the prosecution that the accused were arrested on 04.05.2010. However, P.W.1 had stated that he had identified the accused at the police station on 03.05.2010.

10. Considering the above facts and finding force in the submission of the learned counsel for the petitioner, the illness of the petitioner, and the fact 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 Sessions/Special Court



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for Exclusive Trial of cases registered under SC/ST
(Prevention of atrocities) Act, 1989 Villupuram District;

(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.]
27.03.2024

dk
Speaking/Non-Speaking order
Neutral Citation: Yes/No

Note to Registry:

1. Issue order copy by 28.03.2024

2. Upload the order forthwith.



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Copy to:-

- 1.The Deputy Superintendent of Police
Tindivanam Sub Division,
Tindivanam.
- 2.The Inspector of Police,
Roshanai Police Station,
Villupuram.
- 3.The Superintendent of Prisons,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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