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*Crl.M.P.No.12349 of 2024
in Crl.A.No.1108 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.12349 of 2024
in
Crl.A.No.1108 of 2024

A.Joseph ... Petitioner/Accused

Vs.

The Inspector of Police,
K-8, Arumbakkam Police Station,
Chennai – 106.
(Crime No. 200/2022)

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence against the petitioner/accused imposed by the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai – 600 003 dated 22.07.2024 in S.C. No. 44 of 2023 and enlarge the petition in bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.N.G.P.Rajaram

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence imposed on the petitioner/accused by the judgment dated 22.07.2024 made in S.C. No. 44 of 2023 on the file of the



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learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai - 600

003, pending disposal of the above appeal.

2. The petitioner/accused was convicted by the trial Court in S.C. No. 44 of 2023 by the judgment dated 22.07.2024 and sentenced to undergo five years simple imprisonment and to pay a fine of Rs. 5,000/-, in default to undergo six months simple imprisonment for the offences under Section 307 of IPC, and to undergo three years simple imprisonment and to pay a fine of Rs. 2,000/-, in default to undergo three months simple imprisonment for the offences under Section 509 of IPC, against which the petitioner has preferred an appeal in Crl.A. No. 1108 of 2024 before this Court, along with a petition for suspension of sentence.

3. The brief of the case is that the respondent Police received a complaint from the de facto complainant, and a case was registered in Crime No. 200 of 2022. The de facto complainant is none other than the wife of the petitioner/accused. Since the petitioner was having an affair with another woman, which was questioned by the de facto complainant, and there were frequent quarrels in this regard. On 05.05.2022, at about 00:15 hours, the accused took a knife from the kitchen with the intention of killing the de facto



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complainant, abused her using filthy language, and uttered words, cutting the de facto complainant on her stomach, chest, left shoulder, and elbow repeatedly, causing bleeding injuries. Thereafter, the house owner came to her rescue, and the complaint was lodged, and subsequently, the petitioner was arrested and remanded to judicial custody. The victim received treatment at the Government Hospital, and upon conclusion of the investigation, a charge sheet was filed.

4. During the trial, the prosecution examined PW1 to PW10 and marked Exs.P1 to P15, Ex.X1, and M.O.1 to M.O.4. On the defense side, no witnesses were examined, and no documents were marked. On conclusion of the trial, the Trial Court, based on the evidence of the witnesses and the materials produced, convicted the petitioner as stated above.

5. The contention of the petitioner is that the incident occurred at night, and due to a power failure at the petitioner's residence, no one witnessed the occurrence. Following the victim's cry for help, the house owner came from the top floor and rescued her, at which point the victim had already sustained bleeding injuries. In this case, the petitioner himself was treated in the hospital on the day of the incident for unexplained injuries. He further



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submitted that this was a family dispute, the injuries were not serious, and the conviction of the petitioner under Sections 307 and 509 of IPC is not sustainable. Moreover, the petitioner has been taking care of his wife and children even after the incident, and his wife has now given an affidavit stating that the de facto complainant is not interested in pursuing the complaint further, as she was influenced by others and lacked education when she deposed in the trial Court. The de facto complainant and her children are now living with the petitioner's family, and an affidavit has been produced. The de facto complainant also appeared in person before this Court on the last hearing date.

6. The learned Government Advocate (Crl. Side) appearing for the respondent has filed a counter affidavit and objected to the suspension of sentence, citing the appearance of the de-facto complainant, P.W.1, who was taken to the Police Station and questioned to determine whether the affidavit was filed under compulsion or voluntarily by herself. Primarily, it is a family dispute, and now the children are being taken care of by the petitioner's family, and she has also given a letter in this regard, which is as follows:-



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அனுப்புகை

தேவாரத்திப்பாளி

காஞ்சி 82,

காவல் ப.காவல்

மேலா 116/16 அமீலாசுதன்

உ.ப. சி.ப. (காவல்)

பெண் - 600053

செய்து. 814892-6428

பெயர் :

சுப்பிரமணிய அம்பலம்.

K.8 அம்பலம் காவல்பெண்

பெண் - 100106

உயர் :

சுப்பிரமணிய அம்பலம் காவல்பெண் தேவாரத்திப்பாளி காஞ்சி 82, காவல் ப.காவல் மேலா 116/16 அமீலாசுதன் உ.ப. சி.ப. (காவல்) பெண் - 600053 செய்து. 814892-6428 பெயர் : சுப்பிரமணிய அம்பலம். K.8 அம்பலம் காவல்பெண் பெண் - 100106



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victim is not interested in further proceeding with the case, and the petitioner's family is now taking care of the children. Considering the age and future of the children, and also the letter given, this Court is inclined to suspend the sentence.

8. Accordingly, the substantial sentence of imprisonment imposed on the petitioner is suspended with the following conditions:

(a) The petitioner/accused 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 V Metropolitan Magistrate Court, Egmore, Chennai – 08.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Sessions Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the 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



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lieu of the date of his absence as directed by the Trial
Court.

9. In view of the above, this Criminal Miscellaneous Petition is hereby ordered. However, the Registry is directed to prepare a typed set of papers and post the main case for final hearing at the earliest.

09.09.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral citation : Yes/No
kv
Note: Issue order copy on 09.09.2024.

To

- 1.The V Metropolitan Magistrate Court,
Egmore, Chennai – 08.
- 2.The Sessions Judge, Mahalir Neethimandram,
Allikulam, Chennai – 600 003.
- 3.The Superintendent,
Central Prison,
Puzhal-I.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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